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South Carolina Legislative Audit Council

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Report to the General Assembly

June 1991

1991 Sunset Reviews



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1991 Sunset Reviews

June 1991

As required by the sunset law (§1-20-10 *et seq.* of the South Carolina Code of Laws), we have reviewed the laws and operations of six South Carolina regulatory agencies or programs. This report contains the reviews of five boards and one committee scheduled to terminate on June 30, 1992.

- Board of Barber Examiners
- Board of Cosmetology
- Board of Accountancy
- Board of Examiners for Nursing Home Administrators and Community Residential Care Facility Administrators
- Respiratory Care Committee
- Board of Registration for Geologists

Our sunset review of the South Carolina Department of Insurance is published separately.

State Boards of Barber Examiners and Cosmetology (pp. ix, A-1, B-1)

As in the 1985 audit of these two boards, we have recommended termination for the following reasons:

- The chemicals used by the hairstyling industry can be purchased over the counter, and pose no health threat to the public.
- The frequent and costly inspections conducted by both boards are not needed to ensure sanitary conditions. The Department of Health and Environmental Control could regulate sanitary conditions in hairstyling schools and salons.
- Complaints could be handled by the Department of Consumer Affairs, and the Department of Education could regulate private schools of hairstyling.

The two boards currently perform the same functions:

- licensing hairstylists, salons, and schools;
- inspecting schools and salons;
- handling complaints; and
- maintaining records of salons and hairstylists.

Should the General Assembly wish to continue regulation, the two boards could be combined. This would result in cost savings and increased administrative efficiency.

Board of Accountancy (p. C-1)

After reviewing the laws and operations of the South Carolina Board of Accountancy, we concluded that the regulation of public accountancy is in the public interest and that the board should not be terminated.

However, we found that the regulation of accounting practitioners (APs) is not necessary and not in the public interest. Functions performed by APs can also be performed by unlicensed persons as long as the title or designation of AP is not used, and the nonlicensed status disclosed.

Board of Examiners for Nursing Home Administrators and Community Residential Care Facility Administrators (p. D-1)

Due to recent statutory changes, we conducted a limited review of the State Board of Examiners for Nursing Home Administrators and Community Residential Care Facility Administrators. Act 605 of 1990 substantially

changed the membership of the former Board of Nursing Home Administrators and extensively modified its functions. In addition to the program for nursing home administrators, the law requires the new board to administer a licensing program for community residential care facility administrators beginning in 1992.

As a result of the 1990 legislation, we did not conduct a comprehensive evaluation of the impact of deregulation of these professions. However, we noted that federal law and regulations require that states must have a program for licensing nursing home administrators in order to receive federal medicaid funds.

Respiratory Care Committee (p. E-1)

The Respiratory Care Committee, an advisory committee to the State Board of Medical Examiners, has responsibility for the certification program for respiratory care practitioners. We reviewed the laws and operations of the committee and concluded that title protection for respiratory care practitioners benefits the public and should be continued.

We found the program to be administered efficiently. However, the fees charged to respiratory care practitioners have been excessive and have amounted to more than twice the expenses incurred by the board in administering the program.

Board and committee responses to our reviews can be found as appendices in their respective sections of our report.

Board of Registration for Geologists (p. F-1)

The South Carolina State Board of Registration for Geologists has responsibility for examining and registering qualified geologists and geologists-in-training in South Carolina. We reviewed the laws and operations of the board; evidence is inconclusive about whether the registration of geologists is needed to protect the public. However, given the importance of protecting public health and safety by ensuring that competent professionals perform tasks involving environmental hazards, we recommend that the program be continued.

We identified several problems with the board's management of the registration program. We found that the board's travel expenditures have been excessive, and that it has not effectively managed its contract for administrative services. We also identified areas where the board has not complied with state law, and noted that the board's program has restrictive features which could result in higher prices to consumers.

Copies of all LAC audits are available to the public at no charge. If you have additional questions, please contact George L. Schroeder, Director.

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Authorized by §2-15-10 *et seq.* of the South Carolina Code of Laws, the Legislative Audit Council, created in 1975, reviews the operations of state agencies, investigates fiscal matters as required, and provides information to assist the General Assembly. Some audits are conducted at the request of groups of legislators who have questions about potential problems in state agencies or programs; other audits are performed as a result of statutory mandate.

The Legislative Audit Council is composed of three public members, one of whom must be a practicing certified or licensed public accountant, and six ex officio members.

Audits by the Legislative Audit Council conform to generally accepted government audit standards as set forth by the U.S. General Accounting Office.

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Report to the General Assembly

Board of Barber Examiners

Board of Cosmetology

Board of Accountancy

Board of Examiners for Nursing Home
Administrators and Community Residential Care
Facility Administrators

Respiratory Care Committee

Board of Registration for Geologists

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Report Introduction

The sunset law (§1-20-10 *et seq.* of the South Carolina Code of Laws) provides for the termination of specified boards, programs and commissions on predetermined dates unless their continued existence is justified. The law gives the Legislative Audit Council responsibility for evaluating the performance of the agencies scheduled for termination. We are required to conduct a systematic review so that the General Assembly might be in a "better position to evaluate the need for their continuation, reorganization or termination."

Pursuant to the sunset law, we have reviewed the laws and operations of six South Carolina regulatory agencies or programs. This report contains the reviews of five boards and one committee scheduled to terminate on June 30, 1992:

- State Board of Barber Examiners
- State Board of Cosmetology
- Board of Accountancy
- State Board of Examiners for Nursing Home Administrators and Community Residential Care Facility Administrators
- Respiratory Care Committee
- State Board of Registration for Geologists

The sunset review of a sixth agency, the South Carolina Department of Insurance, is published separately. We did not review the program for Certification of Operators of Sources of Ionizing Radiation (Radiological Technicians), which is also scheduled for termination on June 30, 1992; we were informed by the Department of Health and Environmental Control that no such program or board is in existence (see Report Appendix).

As we have in past audits, we concluded that state regulation of barbers and cosmetologists is unnecessary and these boards should be abolished. If the General Assembly wishes to continue regulation of these professions, we recommend that the boards be combined. We recommend the continuation of the other four boards/programs that we reviewed. Summaries of conclusions and findings for each board are found at the beginning of the individual audit reports.

Audit Objectives

The objectives of the sunset reviews are established in state law as follows:

- (1) Determine the amount of the increase or reduction of costs of goods and services caused by the regulations promulgated by and the administering of the programs or functions of the agency under review.
- (2) Determine the economic, fiscal and other impacts that would occur in the absence of the regulations promulgated by and the administering of the programs or functions of the agency under review.
- (3) Determine the overall costs, including manpower, of the agency under review.
- (4) Evaluate the efficiency of the administration of the programs or functions of the agency under review.
- (5) Determine the extent to which the agency under review has encouraged the participation of the public and, if applicable, the industry it regulates.
- (6) Determine the extent to which the agency duplicates the services, functions and programs administered by any other state, federal, or other agency or entity.
- (7) Evaluate the efficiency with which formal complaints, filed with the agency concerning persons or industries subject to the regulation and administration of the agency under review, have been processed.
- (8) Determine the extent to which the agency under review has complied with all applicable state, federal and local statutes and regulations.

Audit Scope and Methodology

We reviewed operations of the agencies relevant to answering the eight sunset questions for the period FY 85-86 through FY 89-90. In some areas, such as complaint handling, the review was limited to a more recent period. We also limited the scope of our review of the State Board of Examiners for Nursing Home Administrators and Community Residential Care Facility Administrators (see p. D-1).

We reviewed South Carolina statutes and regulations, agency policies and records, and reports from other states and organizations. We interviewed agency officials, government officials in South Carolina and other states, and representatives of organizations and persons interested in the boards' activities.

We used sampling techniques to review the areas of licensing, complaints, and inspections, as applicable. Sampling methodologies, documented in individual audit files, varied according to what was most appropriate to meet the audit objectives. We reviewed internal controls related to the sunset issues; for example, we looked at agency controls in the licensing process, in complaint handling and for ensuring compliance with laws and regulations.

The reviews were conducted and this report was prepared in accordance with generally accepted government auditing standards with one exception. We did not review the reliability of the automated information system used at the Board of Cosmetology, and information from this system was integral to our objectives concerning administrative efficiency and complaint handling.

Boards of Barber Examiners and Cosmetology

Deregulation

In 1985, we published a sunset audit of the boards of cosmetology and barber examiners. We will summarize the arguments presented in the 1985 review for termination of the regulation of the hairstyling industry; we continue to agree with these positions and recommendations.

In the 1985 report, we found that state regulation of the hairstyling industry is unnecessary for the protection of the public's safety, health and welfare. In addition, we found that regulation unnecessarily restricts and taxes the industry. We reviewed the Board of Barber Examiners' and the Board of Cosmetology's licensure functions, regulatory enforcement functions, and policies and procedures (as we have for the present review). We concluded that both boards and their related licensing provisions could be terminated without significantly harming the public. Regulation of the hairstyling industry is not justified based on sanitation concerns or potential harm to the consumer from use of chemical solutions and implements. The report further found that current regulatory measures are superficial and do little to protect the public's health. Licensure of an occupation is justified only on the condition that the unlicensed practice poses serious risk to consumers' life, health and safety, or economic well being. Additionally, licensure is the most restrictive of the regulatory approaches and, therefore, should be a remedy of last resort.

The 1985 report suggested that the industry should be deregulated for the following reasons:

- Chemicals used by hairstylists are sold over the counter to the general public as well as to licensed hairstylists. Status as a licensed hairstylist grants no special privileges as to the types and toxicity of chemicals which can be used on a person's hair or face.
- The frequent and costly inspections conducted by both boards are not necessary to ensure sanitary conditions in hairstyling schools and salons. In the absence of the two boards, the Department of Health and Environmental Control could regulate sanitary conditions in the hairstyling schools and salons.

We continue to support the termination of the boards of cosmetology and barber examiners, as consumers would not be left unprotected. The Department of Consumer Affairs could handle consumer complaints and, under state laws, could protect consumers.

While the regulation of the hairstyling industry is unnecessary, private schools which teach hairstyling need to be regulated (as do all proprietary schools) for the protection of students from fraudulent practices by school owners. Presently, the private hairstyling schools in the state are regulated by two hairstyling boards, instead of the State Department of Education, due to an exemption in §59-59-20 of the Proprietary School Act. Dissolving the boards of cosmetology and barber examiners would not end regulation of such schools. Instead, regulation of private schools of hairstyling would transfer to the Department of Education. The section in 59-59-20 exempting proprietary schools which are "regulated and licensed under an occupational licensing act of the State" from regulation by the State Department of Education would no longer apply.

Recommendation

The General Assembly should consider dissolving the Board of Cosmetology and the Board of Barber Examiners, and eliminating the state's regulation of the industry.

Combination

Our 1985 sunset review recommended that if the General Assembly decided to continue regulation of the hairstyling industry, a cost effective alternative would be to combine the two boards under the direction of one board. We again recommend that this alternative be considered, if the General Assembly does not choose to deregulate the industry.

Combining the two boards would result in substantial cost savings and increased administrative efficiency. The creation of one board of hairstyling would in no way harm the public's health and welfare.

As in 1985, we could find no justification to maintain two separate boards with the same functions to regulate one industry. Natural divisions between the two professions and the two boards based on sex and the type of work performed no longer exist. The continued operation of two boards regulating the same industry has become cumbersome, unnecessary and results in duplication and waste of funds.

Both the Board of Cosmetology and the Board of Barber Examiners perform the same administrative functions: (1) both issue and renew licenses for hairstylists, hair salons and hairstyling schools; (2) both inspect hair salons

and hairstyling schools; (3) both handle complaints about unlicensed and licensed hairstylists; and (4) both maintain detailed records of the state's hairstylists and hair salons.

Cosmetology and barber boards in nine states (Alaska, Colorado, Connecticut, Delaware, New Hampshire, Oregon, Utah, Washington, and West Virginia) have been combined. These states recognized the similarity of the training program for cosmetology and barber licenses through the establishment of a joint licensure program.

Boards in California, Colorado, Idaho, Iowa, Maine, Nebraska, Ohio, West Virginia, and South Carolina give training credit to barbers wishing to obtain cosmetology licenses and to cosmetologists wishing to obtain barber licenses. To qualify for this "cross-over" licensure in South Carolina, a practitioner must be licensed as a master hair care specialist by the barber board in order to qualify for licensure as a cosmetologist. To qualify for licensure under the barber board as a master hair care specialist, a practitioner must be licensed as a registered cosmetologist by the cosmetology board.

The Audit Council has estimated that by dissolving South Carolina's two hairstyling boards and creating one new board with five members located at the present Board of Cosmetology office, the state could save approximately \$21,000 annually (see table below).

**Estimated Savings for Combined
Boards**

Per Diem (board)	\$4,725
Travel (board)	2,120
Rent	7,740
Utilities (electrical/heat, water/sewage)	3,291
Equipment Lease and Service	2,080
Cleaning	895
Total	\$20,851

The creation of one new board to regulate the industry would not only save funds, but would also reduce constraints placed upon hair stylists and hair salons from regulation by two boards. Although the historical differences between the two practices no longer exist, licensed barbers cannot legally work in a cosmetology salon unless they also hold a cosmetology license. Likewise, licensed cosmetologists cannot legally work in a barber shop unless they also hold a barber license.

While many barbers and cosmetologists might object to the creation of one Board of Hairstyling because of a loss of professional identity, this problem could be minimized by allowing licensees to choose the title which would appear on the practitioner license issued by the combined hairstyling board. The licensee could choose whether to have the title of licensed barber, licensed cosmetologist or both appear on the license.

Recommendation

If the General Assembly decides that continued state regulation of hairstyling is needed, the General Assembly should consider dissolving the Board of Barber Examiners and the Board of Cosmetology, and creating a new Board of Hairstyling.

Board of Barber Examiners

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Introduction

Background and History

The South Carolina Board of Barber Examiners was created in 1937 to license and regulate the practice of barbering. The intent of the board is to protect the public from communicable diseases and unsanitary shop conditions. In addition, the board administers an examination to determine if an applicant is qualified to practice as a barber.

The board is composed of five members appointed by the Governor for terms of four years. Each member must be an experienced barber who has practiced the occupation in South Carolina for at least five years. Board members cannot be affiliated with any barber schools or barber supply companies.

The primary responsibilities of the board are to: inspect and license barber schools and shops; examine and license persons wishing to enter the occupation of barbering; and promulgate and enforce rules and regulations pertaining to barbering in South Carolina. The board serves as the liaison between licensees and the public, students and barber schools, and members of the occupation. Inherent in this liaison capacity is the investigation and handling of complaints. The board is empowered to revoke or suspend any license for various causes, including conviction of a felony, gross malpractice, habitual drunkenness and misrepresentation in obtaining a license.

Barbershops and schools are subject to inspection by the board at any time during business hours for compliance with sanitary rules and regulations promulgated by the board. Proper licensing of both shops and barbers is checked during inspections.

Persons wishing to enter the field of barbering must undergo an educational and examination process prescribed by §40-7-100 of the South Carolina Code of Laws. A student is allowed the option of barber school or barbershop on-the-job training in seeking licensure. After training as a barber student, (s)he must pass an apprentice examination, work as a licensed apprentice, and pass the registered barber examination. Section 40-7-25 allows a barber assistant to give shampoos and manicures in a barbershop. As with barbers, barber assistants must be tested and licensed by the board. The board administers examinations for the various types of licenses monthly at its headquarters. The number and types of licenses issued by the board are shown in Table A.1.

Table A.1: Estimated Number of Licenses Issued FY 90-91^a

Type of License	Number Issued
Registered Barber	1,608
Master Hair Care Specialist	1,236
On-the-Job Instructor	245
Apprentice Barber	185
Teacher Certificate	33
Barber Assistant	25
Barber Shop	1,296
Barber College	7
Total	4,635

^a All licenses issued by the board expire June 30 of each year and must be renewed prior to that date.

Sunset Issues

Issue (1) Effects of Regulation

Determine the amount of the increase or reduction of costs of goods and services caused by the regulations promulgated by and the administering of the programs or functions of the agency under review.

Since the Board of Barber Examiners does not regulate fees charged by licensees for their services, it has no direct influence on consumer prices. Costs of regulation, such as training and apprenticeship requirements, examination, license fees, and registration are borne by licensees and may be indirectly passed on to consumers.

Licensing requirements may restrict entry into the occupation, thereby limiting competition. This may also increase the price charged to consumers.

Issue (2) Impacts of Deregulation

Determine the economic, fiscal and other impacts that would occur in the absence of the regulations promulgated by and the administering of the programs or functions of the agency under review.

The termination of the Board of Barber Examiners would not represent a threat to the public health, safety, or welfare. As discussed in our 1985 barber sunset audit, licensing is not justified on the basis of protection of health, sanitation or possible harm from the use of chemicals (see p. ix). Existing state agencies can assume present board responsibilities for handling sanitation inspections, consumer complaints, and for monitoring barber schools. A competitive marketplace could assure the quality and competence of barbers. We could find no evidence that deregulation would endanger the public health, safety or welfare.

The economic impact resulting from the deregulation of the board would exceed \$250,000 annually in fees not collected. In addition, deregulation could cause a decrease in the prices of barber services since less government regulation tends to promote competition and possibly lower prices.

One impact of the absence of the board is that barbers would lose the professional enhancement associated with state regulation. However, the advancement of the social interests of a profession should not be the role of government and could be accomplished by membership in professional and trade associations.

Issue (3) Administrative Costs

Determine the overall costs, including manpower, of the agency under review.

The Board of Barber Examiners receives an annual appropriation from the General Assembly. It also collects revenues through application, license renewal, examination and other fees. The current fee schedule is provided in Appendix A-1. The board has five full time employees: an executive assistant, an administrative specialist, and three investigators.

In FY 87-88 and FY 88-89 the board did not generate enough revenue to equal 115% of appropriations, as required by the Appropriation Acts for those years. The shortfall for these two years totalled \$157,296. In June 1989 the board raised fees to make up for its revenue shortfall. Revenues collected for FY 89-90 were 119% of appropriations. However, the 4% excess revenue generated was not enough to offset deficits from FY 87-88 and FY 88-89. The following table outlines the board's revenues, expenditures, and appropriations.

**Table A.2: Source of Revenues,
Expenditures and Appropriations**

	FY 85-86	FY 86-87	FY 87-88	FY 88-89	FY 89-90
Revenues					
License Fees	\$137,542	\$137,215	\$150,280	\$59,427	\$195,432
Exam Fees	12,016	9,520	10,450	7,685	13,575
Miscellaneous Revenue	736	2,870	2,196	4,005	4,091
Total	\$150,294	\$149,605	\$162,926	\$71,117^a	\$213,098
Expenditures					
Personal Services	\$ 73,869	\$ 83,013	\$ 84,221	\$ 95,407	\$ 96,792
Employer Contribution	14,166	17,788	18,930	19,533	21,846
Other Operating Expenses	42,622	45,979	57,041	60,921	57,072
Total	\$130,657	\$146,780	\$160,192	\$175,861	\$175,710
State Appropriation	\$137,772	\$147,006	\$162,134	\$178,161	\$178,700

^a In FY 88-89 the Board of Barber Examiners initiated deferred revenue.

Source: South Carolina Budget and Control Board documents.

Recommendation

If the General Assembly chooses to reestablish the Board of Barber Examiners, the board should ensure that revenues are sufficient to offset prior year deficits.

Issue (4) Efficiency of Administration

Evaluate the efficiency of the administration of the programs or functions of the agency under review.

State law requires all barbers, barber shops and schools to be licensed by the board. The board maintains files on registered barbers, registered apprentices, barber assistants, master hair care specialists, barber shops, and barber schools. In addition, computerized license renewal information is updated annually. As of March 1991, the board had approximately 4,600 licensees. We reviewed 404 files of current licensees to ensure that they had met education, examination and registration requirements. We also reviewed the board's inspection program and found no deficiencies.

License Program

In sampling licensing files, we found that the board does not always ensure that applicants meet educational requirements, especially for out-of-state barbers seeking a South Carolina license.

Section 40-7-120 and §40-7-100 of the South Carolina Code of Laws require all board licensees, with the exception of barber assistants, to have at least a ninth grade education. Of 113 registered barber files reviewed, 50 (44%) had no documentation that applicants had at least a ninth grade education. Moreover, 43 of these were barbers initially registered in other states.

Section 40-7-160, which addresses reciprocity of licenses, has no educational requirement for out-of-state barbers. Of 48 other states and the District of Columbia that license barbers, 19 have either no minimum educational requirement or require less education than South Carolina. Of the southeastern states, North Carolina, Virginia, and Florida have no minimum educational requirements. Board staff indicated that they do not review out-of-state applicants for proof of education.

In addition, board staff were unable to locate the files of 22 licensees in our sample. The board is responsible for maintaining files on all licensees.

Inspection Program

The board employs three full-time inspectors whose primary tasks are to ensure that sanitary conditions of shops and schools are maintained and that licenses are current. Establishments are graded with an inspection checklist based on the license and sanitary regulations of the board. The board reports that it inspects each shop an average of 2.67 times a year.

Board inspectors issue written warnings for violations of license and sanitary regulations. A shop receiving a low or unsatisfactory score is given 30 days to correct violations. We reviewed all 161 warnings issued by inspectors for FY 88-89 and FY 89-90. Of these, 99 (62%) were issued for violations of license requirements, 33 (21%) were for sanitary violations and 29 (18%) were miscellaneous violations. In our review, we encountered no deficiencies in the inspection program.

Recommendations

If the General Assembly chooses to reestablish the Board of Barber Examiners, it should consider requiring that all out-of-state applicants meet South Carolina educational requirements for licensure.

If the General Assembly chooses to reestablish the Board of Barber Examiners, the board should ensure that it has files on all licensees.

Issue (5) Public Participation

Determine the extent to which the agency under review has encouraged the participation of the public and, if applicable, the industry it regulates.

The Board of Barber Examiners holds public meetings once a month. Notice of each meeting is posted outside the board's office. In addition, the board advertises its meetings in a newspaper with statewide circulation. The board's telephone number is listed in the city of Columbia and the state government telephone directories.

The board has five members who are appointed by the governor for four-year terms. Section 40-7-30, which requires that all board members be barbers with at least five years experience in the state, has no provision requiring public members. In our 1985 review, we recommended that a public member be added to the board. The addition of a public member would provide consumer representation.

Recommendation

If the General Assembly chooses to reestablish the Board of Barber Examiners, it may wish to amend §40-7-30 of the South Carolina Code of Laws to require at least one public member on the board.

Issue (6) Duplication of Services

Determine the extent to which the agency duplicates the services, functions and programs administered by any other state, federal, or other agency or entity.

Many of the functions of the board duplicate programs or responsibilities of other state agencies. The board's regulation of hair care duplicates the regulation of the industry by the cosmetology board. Through local health departments, the Department of Health and Environmental Control maintains oversight of sanitation standards for schools and other places used by or open to the public. Sanitary regulations currently promulgated by the board must be approved by the Department of Health and Environmental Control. Additionally, in the absence of regulation by the board, the Department of Consumer Affairs could assume responsibility for handling consumer complaints.

The State Department of Education, through its office of vocational education, provides similar regulation of private trade schools as does the board in its regulation of barber schools. Section 59-59-20 of the South Carolina Code of Laws exempts schools which are licensed under an occupational licensing act of the state from oversight under the Proprietary School Act. If the board is dissolved, regulation of barber schools could be handled by the State Department of Education.

Issue (7) Handling of Complaints

Evaluate the efficiency with which formal complaints, filed with the agency concerning persons or industries subject to the regulation and administration of the agency under review, have been processed.

In 1985, we recommended that the barber board create a central complaint log, standard complaint form, and written policies and procedures for handling complaints. With the exception of developing a complaint log, the board has complied with these recommendations.

We examined 32 complaints made from November 1987 to February 1991, and found that overall, the board processed the complaints appropriately and in a timely manner. It takes the board an average of 32 days to resolve a complaint. Complaint files indicate that the board took action on 21 complaints, referred 6 complaints to other agencies and did not resolve 2 complaints. Also, three anonymous complaints were made. The board is not required to investigate anonymous complaints. The complaints can be categorized as: those filed by members of the profession (17); those filed by consumers (10); anonymous complaints (3); and those to which there was no indication as to whether the complainant was a barber or a consumer (2).

Complaints From Barbers

The board received 17 complaints filed by members of the profession. A majority of these complaints were made against individuals practicing barbering without a license or were complaints filed by barber students against their instructors. The board resolved 16 of the 17 complaints.

Complaints From Consumers

Ten complaints were filed by consumers. The majority of these complaints were for bad haircuts or injuries sustained while receiving hair treatment. The board received one complaint about unsanitary equipment being used on a consumer. In five of the consumer complaints, the board recommended the consumer contact either a small claims court, the better business bureau, consumer affairs, or the cosmetology board. In these cases, the board indicated that either there was not enough information provided to investigate the complaint or the situation did not directly involve a violation of board laws.

Recommendation

If the General Assembly chooses to reestablish the Board of Barber Examiners, the board should develop and use a complaint log.

Issue (8) Compliance With the Law

Determine the extent to which the agency under review has complied with all applicable state, federal and local statutes and regulations.

The Board of Barber Examiners is governed by the South Carolina Code of Laws. During our review we found one instance where the board has not rescinded a regulation which it no longer enforces. In addition, we found two instances of noncompliance with state law.

The board has neither enforced nor rescinded State Regulation 17-30 requiring every barber obtain a chest x-ray each year in order to renew their licenses. Barbers are no longer required to obtain an x-ray; however, Regulation 17-30 is still in place. In our 1985 audit we recommended that the board rescind State Regulation 17-30.

The board has not complied with §40-7-80 of the South Carolina Code of Laws. This statute requires that the board file with the Secretary of State: "... a record of its proceedings relating to the issuance, refusal, renewal, suspension and revocation of certificates of registration" This record, which also is to contain the barber's name, place of business, and residence, is to be maintained in the Secretary of State's office as a public record.

The board also has not complied with §40-7-90, which requires that the board file a copy of its annual report in the office of the Secretary of State. This report is to be maintained in the office of the Secretary of State as a public record.

We could find no evidence of any other licensing board with similar statutory requirements. Information cited in these statutes can be obtained from the board's office.

Recommendations

If the General Assembly chooses to reestablish the Board of Barber Examiners, the board should rescind any regulation that it no longer enforces.

The General Assembly may wish to repeal §40-7-80 and §40-7-90 of the South Carolina Code of Laws.

Sunset Issues

Schedule of Fees FY 90-91

License Fees ^a	
Master Hair Care Specialist	\$45
Registered Barber	35
Apprentice Barber	25
Barber Assistant	25
Barbershop	35
Barber School	70
Teacher's Certificate	60
Exam Fees	
Master Hair Care Specialist	\$40
Registered Barber	40
Apprentice Barber	40
Barber Assistant	40
Out-of-State	45
Teacher	100
Other Fees	
License Restoration	\$25
Reciprocity	100
Barber Assistant Permit	25
Student Permit	25
New Barber School	150
New Barbershop	100
On-the-Job Training Instructor Exam/License Fee	50

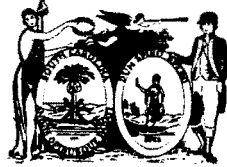
^a License fees are the same for new and renewal.

Source: Regulation 40-7-19, South Carolina Code of Laws.

Board Comments

South Carolina State Board of Barber Examiners

LISA W. HAWSEY
Executive Assistant



BOARD MEMBERS:
Thelma J. Robinson
Aiken
Edwin C. Barnes
Lexington
Thomas F. Brant
Moncks Corner
William D. Norris
West Columbia
Robert C. Sargent
Spartanburg

June 6, 1991

George Schroeder
Director
S.C. Legislative Audit Council
400 Gervais Street
Columbia, SC 29201

Dear Mr. Schroeder:

In response to your May 1991 report to the General Assembly, the Board has carefully reviewed your report and offered the following comments.

The Board does not endorse your recommendation of dissolving the Board of Barber Examiners, thus eliminating the regulation of this industry, nor do we support combining this agency with the Board of Cosmetology.

The Audit Council's determination of \$21,000.00 cost savings is not in itself substantial enough to warrant such a combination. The Board of Barber Examiners is a revenue generating operation that derives its funds from licensing individuals, schools, and salons. In essence, a small self sustaining agency is quietly carrying out its mandate to ensure qualified people are providing quality services. The system is working quite well and we should all be reminded of the quote "If it isn't broken, it doesn't need fixing".

The Board is of the collective opinion that everything is working well. There have been no outbreaks in epidemics nor have there been loud complaints from the general public.

Thank you for allowing me to express my comments as I felt they were very necessary. I see our agency not only as a protective link serving the consumer and governing a profession that has thrived in the State of South Carolina since 1937, but a profession that I am very proud to be a part of.

Respectfully submitted,

William Don Norris
S^H

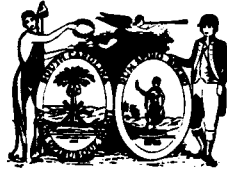
William Don Norris
Chairman

WDN/lh

900 Garland Street Columbia, S.C. 29201
Phone: (803) 737-1733

South Carolina State Board of Barber Examiners

LISA W. HAWSEY
Executive Assistant



June 6, 1991

BOARD MEMBERS:
Thelma J. Robinson
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Spartanburg

George Schroeder
Director
S.C. Legislative Audit Council
400 Gervais Street
Columbia, SC 29201

Dear Mr. Schroeder:

Our Board is submitting our comments of the first draft from your agency's review of our Board.

Issue 1. Licensing requirements do not restrict entry into the occupation, limit competition, or increase prices charged to consumers. Anyone who has completed the necessary education requirements can apply for a license through the Board of Barber Examiners. However, only those that pass the required testing are licensed. The Board feels only those qualified should be licensed to ensure public confidence in service rendered. As in any free enterprise system, prices are determined by individual licensed operators or shop owners. The public is free to choose where they receive service and price paid for such service.

Issue 2. The Board takes exception to your conclusions that termination of the Board of Barber Examiners would not represent a threat to the public. Barbering is a profession that requires skill and regulation to ensure only those qualified offer their services to the public.

Your comment that \$250,000.00 in annual fees that would not be collected would place a burden on the already taxed citizens in South Carolina. If these fees are not collected within our industry, the tax payer would foot the bill. The Board is self generating in revenue and does not place the tax burden on the general public to fund its operations.

Issue 3. The current Board is aware of its judiciary responsibility. We have an adequate fee structure in place to cover our operating costs and we will continue to work with the legislature to ensure our fees cover all operational costs.

Issue 4. We concur. We will work legislatively to see that out of state applicants for reciprocity meet the same educational requirements as do in state applicants.

We would like to point out that the missing records that we were not able to locate were files that were generated as far back as the 1940's and 1950's and at that time our record keeping system was not required to be maintained in the manner as we are now required.

Issue 5. We concur.

Issue 6. We concur.

Issue 7. We concur.

Issue 8. We concur.

Thank you for allowing us the opportunity to respond to your draft.

Respectfully submitted,

William Don Norris

William Don Norris
Chairman

S.C. STATE BOARD OF BARBER EXAMINERS

WDN/lh

Board of Cosmetology

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Introduction

Background

The South Carolina State Board of Cosmetic Art Examiners was created by Act 771 of 1934. Act 388 of 1982 renamed the board the "State Board of Cosmetology."

The board consists of six members appointed by the Governor. Four of the members are experienced cosmetologists who must have been in the practice of cosmetology in this state for at least five years prior to appointment. One member must be either a manicurist or esthetician, and one must be a public member. The public member of the board must not be connected with the practice of cosmetology and may not participate in the examination of any applicant for a license. Board members may not own interest in any cosmetology school or substantial interest in any company which deals in wholesale sales or services to beauty salons.

The board receives advice from the industry through its advisory committee. The committee consists of six members who are appointed by the Governor. The committee meets with the board to discuss problems, make recommendations, and hear reports on board policy which affects the industry.

Cosmetology is defined as:

. . . engaging in any one or a combination of the following practices, when done for compensation either directly or indirectly: arranging, styling, thermal curling, chemical waving, pressing, shampooing, cutting, shaping, chemical bleaching, chemical coloring, chemical relaxing, or similar work, upon the hair of any person, or wig or hairpiece of any person, by any means, with hands or mechanical or electrical apparatus or appliances, or by the use of cosmetic preparations, make-up, antiseptics, lotions, creams, chemical preparations, or otherwise, or by waxing, tweezing, cleansing, stimulation, manipulating, beautifying, or similar work, the scalp, face, neck, arms, hands, or by manicuring or pedicuring the nails of any person, or similar work.

Duties of the board fall into three functional areas:

Licensing

Persons who engage in, or attempt to engage in the practice of cosmetology, are required to be licensed by the State Board of Cosmetology. All licenses are renewed annually, providing practitioners, except teachers, complete six hours of board-approved continuing education. Teachers are required to complete fifteen hours of instruction. In addition, the board licenses cosmetology, manicuring and esthetics schools and salons.

The board's licensing examinations consist of both written and practical tests. The national standardized written tests used for all individual licenses are provided and graded by a national testing service. The board has developed and administers its own practical examinations. South Carolina allows reciprocal licensing of applicants from other states which have similar education and examination requirements.

Complaints

The board's special investigator receives and investigates complaints filed with the board. The board may hold hearings and discipline members of the profession.

Enforcement

The board employs two full-time inspectors who periodically inspect beauty salons for compliance with sanitary rules and safety regulations. The public and private cosmetology schools and programs are inspected by the special investigator. The inspectors also verify that salons and practitioners are appropriately licensed. The board may issue an order requiring person(s) to appear before the board. If the board has sufficient evidence that cosmetology statutes have been violated, it may issue an order for such violations to cease. The board may also apply to the court of common pleas for an injunction restraining the violator(s).

As of June 1990, there were 16,563 licensed cosmetologists, manicurists, estheticians and teachers. Ninety-five percent of individual licensees were cosmetologists. The board had also licensed 4,987 salons and 38 schools at the end of FY 89-90.

Sunset Issues

Issue (1) Effects of Regulation

Determine the amount of the increase or reduction of costs of goods and services caused by the regulations promulgated by and the administering of the programs or functions of the agency under review.

Since the Board of Cosmetology does not regulate fees charged for cosmetology services, it has no direct impact on consumer prices. However, board rules and regulations generate costs to licensees. Such occupational costs include training expenses (school tuition and continuing education), examination fees, initial and renewal licensing fees, and costs incurred by schools and salons in meeting equipment and facility standards. Licensing requirements limit entry into the occupation and may reduce competition and, thereby, contribute to increased prices for consumers. The significance of this increase, however, cannot be determined since it probably varies on an individual basis.

Continuing Education Classes

All persons licensed by the Board of Cosmetology, except teachers, are required to complete six contact hours of instruction for continuing education credit annually. Teachers are required to complete 15 hours of instruction annually.

The continuing education program provided by the Board of Cosmetology does not focus on issues of health and safety. Of 15 board-approved continuing education cosmetology classes scheduled for February 1991, 8 provided education on hairstyling and cosmetics exclusively. Seven classes provided education on safety-related issues in addition to hairstyling and cosmetics. Of the 94 total hours of instruction (for the 15 classes), approximately 6 hours dealt with health and safety issues. The other 88 hours of instruction dealt with hairstyling, cosmetics, and other related topics.

Since the purpose for state regulation of cosmetology is that of consumer health and safety, continuing education in cosmetology which focuses on styling hair should not be an activity required by the state for relicensure.

The program of continuing education in cosmetology generates approximately \$500,000 a year for schools of cosmetology and trade associations which

sponsor training classes. Board regulations disallow continuing education credit for attending trade shows in lieu of the continuing education workshops at these several schools of cosmetology and trade associations. Such trade shows provide similar demonstrations of hair fashion and styling.

In addition, cosmetologists attend continuing education workshops with as many as 375 participants, requiring a six to seven hour day, in programs which address safety and health issues at a minimum, if at all. The value of this program is negligible in terms of the protection of the consumer, and should be reformulated or terminated.

Recommendation

If the General Assembly chooses to reestablish the Board of Cosmetology, the board should reformulate its continuing education program to ensure that training is provided in the area of safety, health and hygiene. Continuing education on the subjects of hair styling and cosmetics should be optional. If this is not done, the program should be terminated.

Issue (2) Impacts of Deregulation

Determine the economic, fiscal and other impacts that would occur in the absence of the regulations promulgated by and the administering of the programs or functions of the agency under review.

The termination of the Board of Cosmetology and related cosmetology licensing provisions would not represent a threat to the public health, safety, or welfare. As discussed in our 1985 cosmetology sunset audit, licensing is not justified on the basis of protection of health, sanitation or possible harm from the use of chemicals (see p. ix). Existing state agencies can assume present board responsibilities for handling sanitation inspections, consumer complaints, and for monitoring cosmetology schools. A competitive marketplace could assure the quality and competence of hairstylists. We could find no evidence that deregulation would endanger the public health, safety or welfare.

The economic impact resulting from deregulation of the cosmetology industry would exceed \$580,000 annually in fees not collected. In addition, deregulation could cause a decrease in the prices of cosmetology services since less government regulation tends to promote competition and possibly lower prices.

One impact of the absence of the board is that cosmetologists would lose the professional enhancement associated with state regulation. However, the advancement of the social interests of a profession should not be the role of government and could be accomplished by membership in professional and trade associations.

Issue (3) Administrative Costs

Determine the overall costs, including manpower, of the agency under review.

From FY 84-85 through FY 89-90, the board's expenditures increased approximately 57% from \$314,477 to \$492,354. Personal services costs accounted for 47% of the FY 89-90 expenditures. In FY 89-90, 66% of the board's other operating expenses were attributed to four categories:

- contractual services
- supplies and materials
- travel
- equipment

During that same period, revenues raised through licensure, examinations, and other sources increased 51% from \$385,215 to \$582,969.

Table B.1: Source of Revenues, Expenditures and Appropriations

	FY 85-86	FY 86-87	FY 87-88	FY 88-89	FY 89-90
Revenues					
License Fees	\$298,107	\$327,898	\$365,312	\$449,461	\$478,293
Examination Fees	86,340	87,275	102,660	102,208	95,143
Miscellaneous Revenue	768	183	5,292	5,746	9,533
Total	\$385,215	\$415,356	\$473,264	\$557,415	\$582,969
Expenditures					
Personal Services	\$164,281	\$173,353	\$192,993	\$215,242	\$228,904
Other Operating Expenses	150,196	167,225	217,480	225,870	263,450
Total	\$314,477	\$340,578	\$410,473	\$441,112	\$492,354
State Appropriation	\$355,638	\$374,291	\$411,367	\$462,359	\$502,702

Source: South Carolina State Budget and Control Board documents.

On an average, from FY 87-88 through FY 89-90, the cosmetology board generated revenue equal to or exceeding the requirements of section 129.41 of the FY 87-88 Appropriation Act. The FY 87-88 Appropriation Act required:

Professional and Occupational Licensing Agencies must generate 115 percent of their appropriation and are exempt from budget reductions. In any year during which any Professional and Occupational Licensing Agency does not generate the required revenue as provided above, it shall generate sufficient revenue in the succeeding year to offset the deficit

As shown in Appendix B-I, the Board of Cosmetology has 13 positions, 11 of which were filled as of January 1991. Budget documents for FY 89-90 and FY 90-91 show no additional funding for new positions.

The board also uses examiners (to administer examinations) who are paid an examiners fee of \$35 and mileage for days they work for the board. Nonpublic members of the board who assist with examinations are paid \$35 per diem and mileage.

Recommendation

If the General Assembly chooses to reestablish the Board of Cosmetology, the agency should continue to ensure that current revenue requirements are met.

Issue (4) Efficiency of Administration

Evaluate the efficiency of the administration of the programs or functions of the agency under review.

Agency records and documents which we reviewed show that the cosmetology board has corrected material deficiencies cited in our 1985 audit.

The cosmetology board has written policies and procedures for the issuance and renewal of licenses. The board licenses approximately 17,000 cosmetologists, manicurists, and estheticians. We examined 247 cosmetology licensing records to determine if the agency's issuance of licenses has been done in accordance with licensing requirements. Licensing records were reviewed to verify that applicants had completed the required educational hours, received passing grades on the required examinations, and completed annual continuing education training. We found no problems in the area of compliance with licensing requirements.

Inspection Program

In FY 89-90, the cosmetology board reported it inspected 82 cosmetology schools and made a total of 6,445 salon inspections (licensed salons must be inspected at least annually). The board employs two full-time inspectors and one special investigator. The board has written procedures and inspection criteria to ensure that thorough and consistent inspections are conducted. In

FY 89-90, the board cited 2,316 deficiencies. Table B.2 provides information on the nature of the deficiencies.

**Table B.2: Deficiencies Cited in
Cosmetology Board Inspections
FY 89-90**

Licenses/inspection reports not posted	294 (13%)
Entrance, lighting, ventilation, floors, walls, ceilings	325 (14%)
Furnishings, equipment	902 (39%)
Rods/rollers, trays, brushes, combs	662 (28%)
Sanitation (wet, dry or ultra violet)	67 (3%)
Other (animals, pets, first aid, restrooms, waste storage, linens condition/storage)	66 (3%)
Total Deficiencies	2,316 (100%)

According to board staff, one salon inspected during FY 89-90 received a failing grade (below 70).

The cosmetology board's authority to enforce its sanitation regulations is limited. The board does not have the authority to issue fines. When violations are found, the board can write letters and require violators to appear before the board. The board can also initiate prosecution of persons who violate regulations.

Recommendation

If the General Assembly chooses to reestablish the Board of Cosmetology, it may wish to consider granting the board authority to issue fines to enforce its regulations.

Issue (5) Public Participation

Determine the extent to which the agency under review has encouraged the participation of the public and, if applicable, the industry it regulates.

The Board of Cosmetology holds 12 regular meetings per year. Public participation is encouraged by announcing board meetings through the media (newspapers), and by posting meeting notices at the board office. The board also has listings in the state government and city of Columbia telephone directories.

Public representation on the board is provided by one public member as mandated by Act 388 of 1982. The public member must not be connected with the practice of cosmetology.

The board receives input from the industry through its advisory committee, which is composed of representatives from industry trade associations.

Issue (6) Duplication of Services

Determine the extent to which the agency duplicates the services, functions and programs administered by any other state, federal, or other agency or entity.

Many of the functions of the board duplicate programs or responsibilities of other state agencies. The board's regulation of hair care duplicates the regulation of the industry by the Board of Barber Examiners. Through local health departments, the Department of Health and Environmental Control maintains oversight of sanitation standards for schools and other places used by or open to the public. The Board of Cosmetology has the authority to implement sanitary regulations for the management of cosmetology schools and salons. These sanitary regulations must be approved by the Department of Health and Environmental Control. In the absence of regulation by the board, the Department of Consumer Affairs could assume responsibility for handling consumer complaints.

The State Department of Education, through its office of vocational education, provides similar regulation of private trade schools as does the board in its regulation of cosmetology schools. Section 59-59-20 of the South Carolina Code of Laws exempts schools which are licensed under an occupational licensing act of the state from oversight under the Proprietary School Act. If the board is dissolved, regulation of cosmetology schools could be handled by the South Carolina Department of Education.

Issue (7) Handling of Complaints

Evaluate the efficiency with which formal complaints, filed with the agency concerning persons or industries subject to the regulation and administration of the agency under review, have been processed.

A review of the Board of Cosmetology complaint files showed that complaint records are adequately maintained. The board maintains a computerized complaint log, and classifies complaints by type. According to board records, 111 (64%) of 173 complaints registered with the board over the last three years were related to the practice of cosmetology by unlicensed individuals and unlicensed salons. Thirty-four (20%) of the 173 complaints were related to consumer dissatisfaction with cosmetology services, and 11 (6%) of the 173 complaints were related to sanitation.

The board uses a computer printout for easy access to information on complaints. We reviewed 55 (32%) of the 173 complaints registered with the board during the last three fiscal years (FY 87-88, FY 88-89, and FY 89-90). Files were reviewed to determine if complaints were thoroughly investigated and resolved in a consistent manner. We found the complaints reviewed were investigated and resolved consistently, in accordance with state law, and within a reasonable period of time. Many of the complaints were resolved within two months.

Issue (8) Compliance With the Law

Determine the extent to which the agency under review has complied with all applicable state, federal and local statutes and regulations.

The State Board of Cosmetology is regulated only by the statutes and regulations enacted by the state of South Carolina. We reviewed the laws and regulations governing the administration of the board and found the board to be in compliance.

Board Membership

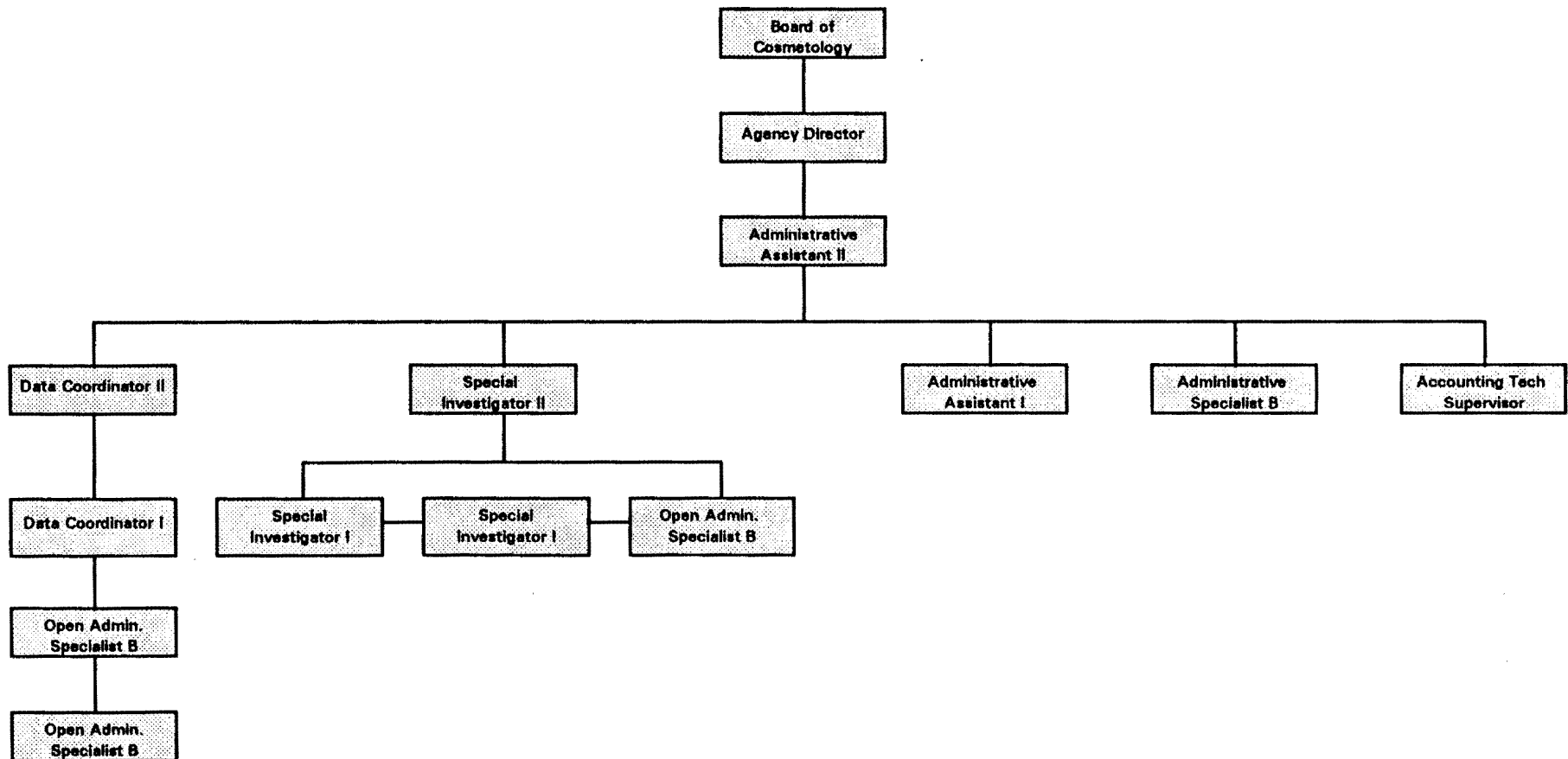
The State Board of Cosmetology is composed of six members. To reduce the chances of tie votes, a board should have an odd number of members.

Recommendation

If the General Assembly chooses to reestablish the Board of Cosmetology, it may wish to consider amending §40-13-30 of the South Carolina Code of Laws to require an odd number of members on the Board of Cosmetology.

Sunset Issues

Board of Cosmetology Organization Chart



Source: State Board of Cosmetology.

Schedule of Fees FY 90-91

Licenses	Initial	Renewal
Cosmetologist/Manicurist/Esthetician		
Before 3/10	\$45	\$15
After 3/10	•	\$25
Salon		
Before 6/30	\$50	\$25
After 6/30	•	\$50
School		
Before 6/30	\$150	\$50
After 6/30	•	\$75
Instructor		
Before 3/10	\$50	\$30
After 3/10	•	\$60

Examinations	Fees
Cosmetologist/Manicurist/Esthetician	
Practical and Written	\$45
Instructor	
Written	\$25
Practical	\$25

Other Fees	Fees
Inactive License	\$10
Salon — Change of Location	\$50
Salon — Change of Owner/Name	\$25
School — Change of Location	\$150
School — Change of Owner/Name	\$25
Restoration Fee	\$50

Board Comments

Board Comments



**South Carolina
State Board of Cosmetology**

3710 LANDMARK DRIVE, SUITE 205

Columbia, S.C. 29204

C. Arthur Pruitt, EXECUTIVE DIRECTOR
(803) 734-9660

BOARD MEMBERS

LOTTIE GREGG

CHAIRMAN

WEST COLUMBIA

RAY GAMBRELL

VICE CHAIRMAN

GREENWOOD

BOARD MEMBERS

MARY ALLEN

MYRTLE BEACH

JACQUIE CORLEY

COLUMBIA

MARY BOWMAN

TIMMONSVILLE

FRANCES DuBOSE

MT. PLEASANT

June 11, 1991

Mr. George L. Schroeder, Director
Legislative Audit Council
400 Gervais Street
Columbia, S. C. 29201

Dear Mr. Schroeder:

I would like to express my appreciation for Mr. Robert Chatman of your staff and the work he has done in the review of this agency. The Board welcomes constructive suggestions from all sources and particularly from someone who has engaged in such an in-depth study of our agency as has Mr. Chatman.

Enclosed please find the Board's response to several issues raised in your report in the sequence in which they were presented.

We believe that the continuance of the Board of Cosmetology is vital to ensure that those entering the practice of cosmetology are properly trained and tested to assure a minimum level of competence and to provide for the safety and welfare of the consumers of South Carolina.

Sincerely,

Lottie L. Gregg
Chairman of the Board

The Cosmetology Board opposes combining the Boards of Cosmetology and Barber Examiners. The Cosmetology Board requires formal training of all licensees and does not have an apprentice program as does the Barber Board. The Cosmetology Board also requires annual attendance at an approved continuing education class whereas the Barber Board does not require continuing education. The Board feels strongly that combining the boards would not be in the best interest of either industry or those that practice barbering or cosmetology or the consuming public.

Issue (1) - Effects of Regulation

It is unlikely that a \$15.00 annual license fee adds significantly to the price of services to the consumer.

Continuing Education Classes

The board feels that continuing education on the subjects of hair styling and cosmetics in addition to safety and sanitation is vital for the practitioner to remain current in trends and fashions and should be continued as part of the curriculum.

Issue (2) - Impacts of Deregulation

The board agrees with the purpose as stated in the Florida Cosmetology Act - "The Legislature recognizes that the practice of cosmetology involves the use of tools and chemicals which may be dangerous when applied improperly and, therefore, deems it necessary in the interest of public health to regulate the practice of cosmetology in this state."

Perhaps the most compelling argument for continued regulation is the responsibility to prevent injury or harm to the public from the misuse of toxic and caustic chemicals, as well as the misuse of implements and equipment used to provide cosmetology services. Implements and equipment used when providing cosmetology services are extremely dangerous and, without proper training and verification of minimal competency through comprehensive testing, clients will be harmed. Of major concern are those that utilize ultra violet and infra red rays, high frequency current, electrolysis equipment, heat producing electrical appliances and equipment, and cutting implements. When used improperly or by untrained and unregulated persons, the equipment and implements listed will cause:

- severe burns to the skin and eyes
- electrical shock

destruction of skin tissue
severe cuts and permanent scarring
damage to hair follicle and papilla
permanent hair loss
infection
transmission of blood borne disease

Exposure through inhalation and direct contact to the skin and eyes are not the only hazards of these chemicals. Improper storage and handling of both the used and unused products have resulted in fires as reported by municipal fire departments. Some of the chemicals, products, methods and equipment used to provide cosmetology services are considered so dangerous by insurance companies that they have excluded liability coverage from certain services in schools and in salons and provide limited coverage only to those who hold professional licenses. The United States Department of Labor, Occupational Safety and Health Administration (OSHA), now includes salons and schools as those places of work where hazardous chemicals are used and stored. Therefore, the owners or managers must comply with the chemical hazard communication standards.

In addition to the regulatory responsibility, the Board of Cosmetology must expand its function to provide "expert" information to licensees since the professions are chemical intensive and employ frequent use of potentially dangerous equipment. It is imperative that systematic and educated oversight be conducted in the interests of civic welfare, health and safety. The Board is staffed and organized to serve as an information clearinghouse on behalf of State government, in the interest of tested and licensed practitioners for the safety and welfare of the general public. Board staff routinely collect, examine, evaluate, and distribute to licensees research data on products and equipment and aspects of the profession which contribute to public welfare.

The necessity for the continued regulatory responsibility for information dissemination by future Boards is imperative. Product abuse, or uninformed misuse, given their chemical status, can and does pose a serious risk to the unsuspecting client.

The Board presently faces new challenges such as Tanning Beds, Tattooing, Electrology, Removation (hair removal by use of radio waves), Chemical Facial Peels, Steam Vapor Facial Equipment and other electrical appliances and equipment which can cause potential harm when performed or used by untrained individuals. Many of these services and equipment were not in wide use or were legal until recently.

We feel that the preponderance of evidence requiring the licensing of cosmetologist as evidenced by the fact that all

fifty states require licensure demonstrates the continued need for regulation. Without licensure, those leaving South Carolina, would not under present licensing laws be eligible for reciprocity licensure by any other state. This could have a potentially devastating effect upon those individuals who make their living in the practice of cosmetology who found themselves in a position of having to relocate to another state.

As of 1989 all fifty (50) states and the District of Columbia required a minimum training of 1,000 hours or greater with twenty-four (24) states requiring 1,500 hours as does South Carolina. Deregulation would probably result in a large number of untrained individuals offering to the public services which have the potential to cause bodily harm or injury.

Without the revenue generated from license fees, existing state agencies would be adversely impacted financially to handle sanitation inspections, consumer complaints, and to monitor cosmetology schools as recommended in this report. In these times of fiscal constraints, the board suggests that this is not a viable option. We believe that regulation is necessary to assure quality and competence of those practicing cosmetology through proper training and testing.

The board does not agree that deregulation could cause a decrease in the prices of cosmetology services; we believe deregulation would result only in a decrease in the quality and safety of services received by the public.

Without regulation and licensure of individuals in the salons, the cost of insurance could reach such proportions that an increase in the cost to the consumer would be inevitable

Issue (6) - Duplication of Services

The board does not feel that any state agency has the expertise to perform the services performed by this agency without benefit of the attending revenue and considerable training in the cosmetology field.

Board of Accountancy

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Introduction

Summary

After reviewing the laws and operations of the South Carolina Board of Accountancy, we concluded that the regulation of certified public accountants and public accountants is in the public interest and that the board should not be terminated. However, we found that the regulation of accounting practitioners is not necessary and not in the public interest.

Background

Accountancy laws governing the licensing of professional accountants have been enacted in all fifty states and other U.S. jurisdictions. South Carolina passed its first accountancy law in 1915. As noted in our 1985 report, the original law required that persons representing themselves to the public as certified public accountants (CPAs) be registered by the Board of Examiners of Public Accountants. This three-member board had no authority over other accountants in public accountancy and had no power to limit the practice of public accountancy to licensees. The 1915 law restricted the use of the title "CPA."

In 1969, the law was amended to create a nine-member Board of Accountancy. Membership is composed of five licensed CPAs, two licensed public accountants or accounting practitioners, and two public members not engaged in the practice of public accounting. The board's primary functions are to monitor entry into the profession by enforcing requirements governing examination, education and experience, and to maintain high standards of competency through rules of professional conduct, continuing education, and discipline of licensees. The board is administered by a director, with the assistance of a business associate, an investigator, and two administrative specialists.

Three types of accountants are currently licensed in South Carolina: the certified public accountant, the public accountant (PA), and the accounting practitioner (AP). The CPA must demonstrate his professional competence by passing a uniform national examination and meeting established standards for education and experience. The 1969 act formed the PA classification and enabled those accountants who were using the title and practicing as public accountants at that time to be "grandfathered," or remain licensed, as PAs. When the grandfathering process terminated on January 1, 1972, no other individuals could be licensed as PAs. The PA is allowed to perform the same functions as the CPA. In order to be licensed as an AP, an applicant must hold a baccalaureate degree in accounting or pass the practice and theory sections of the uniform CPA exam. The AP may perform most accounting

functions but cannot render an opinion, known as the "attest function," on any type of financial statement.

At the close of FY 89-90, the board's roster of licensees totaled 3,132, composed of 2,901 CPAs, 92 PAs, and 139 APs.

Sunset Issues

Issue (1) Effects of Regulation

Determine the amount of the increase or reduction of costs of goods and services caused by the regulations promulgated by and the administering of the programs or functions of the agency under review.

The Board of Accountancy has no direct control over prices charged by practitioners for services rendered. The board does assess fees for examination, re-examination and annual licensure. Estimated revenues paid by members of the profession to the board in FY 90-91 are approximately \$445,000. In addition, licensees must obtain a specified amount of continuing education in order to renew their licenses. Current continuing education requirements are 60 hours every two years; in January 1992, this will change to 40 hours every year. Paying for the required continuing education also increases costs to the profession. Such costs may be passed on to the consumer, but it is unlikely that they significantly impact the total price paid for the services of licensed accountants.

In order to obtain a license to practice as a certified public accountant (CPA), candidates must meet several requirements including: a baccalaureate degree from an approved university or college; successful completion of the national CPA exam; and two years experience practicing under the supervision of a licensed CPA or public accountant (PA).

Regulation of licensees, especially through the board's administration of the national CPA examination, may limit the number of people able to practice as CPAs. This in turn could increase costs to consumers. However, possible increases to the price of accounting services do not outweigh the benefits of such regulation to the public.

Issue (2)

Impacts of Deregulation

Determine the economic, fiscal and other impacts that would occur in the absence of the regulations promulgated by and the administering of the programs or functions of the agency under review.

Regulation by the Board of Accountancy protects the public against incompetent practitioners through the licensing laws and regulations. Both the clients who hire the services of certified public accountants, and third parties who rely on the financial reports and statements produced by CPAs, need the assurance that CPAs have achieved a certain level of competence.

In particular, the "attest" or "audit" function of a CPA, a formal, professional opinion on the fairness and reliability of a financial statement, is relied upon by a large segment of the public. This function is restricted to licensed CPAs and public accountants (PA) only. Without licensure, it might be difficult for lenders, investors or anyone with a stake in the financial soundness of a company to rely on financial reports and other records.

Deregulation would increase the likelihood of inadequately prepared financial statements, which in turn could contribute to financial problems for the businesses involved. Substandard reports and audits could increase the potential for financial mismanagement and could destroy investor and stockholder confidence. Any resulting loss of investment capital would be detrimental to commerce within the state.

Every state and U.S. territory licenses the practice of public accounting. Certified public accountants are required to have specified levels of education and experience and to pass the uniform CPA exam in each state and territory. The public's ability to identify a skilled accountant would be substantially impaired if no uniform examination and licensure process were available through state regulation. Uniformity in reporting financial transactions might also be affected if accountants were not required by law to pass the national CPA exam and adhere to national accounting standards and practices.

Also, South Carolina practitioners could be prevented from representing clients before the Internal Revenue Service, or from auditing the financial statements required by the Securities and Exchange Commission, if they had no means to be licensed as certified public accountants.

In conclusion, we determined that state regulation of certified public accountants should continue. However, we have found that the regulation of accounting practitioners is not necessary.

Licensing of Accounting Practitioners

In both the 1979 and 1985 sunset reviews of the Board of Accountancy, we recommended that the accounting practitioner (AP) class no longer be regulated by state law. In FY 89-90, the board licensed 139 accounting practitioners. We found that licensure of APs was unnecessary and not in the public interest. Functions performed by APs can also be performed by unlicensed persons as long as the title or designation of AP is not used, and the nonlicensed status disclosed. We again recommend that licensure of APs be eliminated.

Sections 40-1-510 and 40-1-540 allow the board to regulate APs whose functions include developing, recording, analyzing or presenting financial information and giving advice regarding accounting controls, systems and procedures. In practice, the work performed by accounting practitioners is limited to elementary accounting services and bookkeeping. The AP cannot certify or attest to the fairness or validity of any financial statement or report.

The majority of states do not regulate accounting practitioners. In 1990, only four states, including South Carolina, licensed APs. The 1984 Model Public Accountancy bill, a joint effort of the American Institute of Certified Public Accountants (AICPA) and the National Association of State Boards of Accountancy, does not provide for licensing practitioners. Also, the Legislative Policy of the AICPA states:

There is no such compelling need for licensing and regulation of persons offering record-keeping and elementary accounting services performed at the instance of, and for the benefit of, employers and clients.

Recommendation

The General Assembly may wish to consider repealing §40-1-510 through §40-1-600 of the South Carolina Code of Laws governing the licensure of accounting practitioners.

Issue (3) Administrative Costs

Determine the overall costs, including manpower, of the agency under review.

The Board of Accountancy receives an annual appropriation from the General Assembly. The board collects revenues through application, license renewal, and other fees. The board has five full-time employees: a director, a business associate, an investigator, and two administrative specialists. The board has substantially met the appropriation act requirement that, for FY 87-88 through FY 89-90, a professional licensing agency must generate revenue equal to 115 percent of its appropriation. Table C.1 outlines the board's revenues, expenditures and appropriations.

**Table C.1: Source of Revenues,
Expenditures and Appropriations**

	FY 85-86	FY 86-87	FY 87-88	FY 88-89	FY 89-90
Revenues					
License Fees	\$148,279	\$213,571	\$216,975	\$261,417	\$272,755
Application Fees	101,015	109,060	136,415	165,740	153,600
Total	\$249,294	\$322,631	\$353,390	\$427,157	\$426,355
Expenditures					
Personal Services	\$89,346	\$102,619	\$102,926	\$113,739	\$121,624
Employee Benefits	16,441	18,194	18,936	21,635	24,676
Other Operating Expenses	134,802	143,366	168,685	189,913	183,325
Total	\$240,589	\$264,179	\$290,547	\$325,287	\$329,625
State Appropriation	\$253,531	\$267,792	\$306,716	\$361,084	\$373,540

Source: State Budget and Control Board documents.

Issue (4) Efficiency of Administration

Evaluate the efficiency of the administration of the programs or functions of the agency under review.

The accountancy board has implemented several recommendations affecting efficiency which we made in the 1985 review. The board has developed a procedures manual, which contains detailed procedures for carrying out the board's functions and summarizes the board's decisions and policies.

Also, the General Assembly passed three statutory revisions which we recommended. The revisions have:

- more clearly defined the requirement that applicants be of good moral character;
- made exceptions for renewal of accounting practitioner licenses mirror requirements for CPAs and PAs; and,
- eliminated advertising restrictions against testimonials and endorsements.

We conducted a random sample of 45 licensee files, and found that the board had efficiently and equitably applied the statutory and regulatory provisions governing licensure, continuing education, and license renewals.

Issue (5) Public Participation

Determine the extent to which the agency under review has encouraged the participation of the public and, if applicable, the industry it regulates.

We reviewed the accountancy board's encouragement of public participation. We found that the board conducts public meetings eight to ten times a year, and posts a notice of each meeting and an agenda on its bulletin board at least 24 hours prior to each meeting. The board has listings in both the state

government and city of Columbia telephone directories. In addition, in September 1990, the board began publishing a semi-annual newsletter for accounting educators, containing information of particular interest to accounting educators and students, and inviting comments and suggestions from readers. However, a suggested change in the board's public representation is discussed below.

Public Representation on Board

As required by §40-1-80 of the South Carolina Code of Laws, the nine-member board includes two public members who are not engaged in the practice of public accounting. One public member is a CPA who is not presently licensed to practice but who could re-activate his license by meeting the board's continuing professional education requirements. Public members are appointed to professional licensing boards to ensure consumer input in board activities and provide an additional perspective in board decision-making. While state law does not prohibit a non-practicing CPA from serving as a public member, having a CPA as a public member raises a question as to whether true public representation is accomplished.

Recommendation

The General Assembly may wish to consider amending §40-1-80 of the South Carolina Code of Laws, to provide for two "lay members" (rather than two "public members not engaged in the practice of public accounting") on the South Carolina Board of Accountancy.

Issue (6) Duplication of Services

Determine the extent to which the agency duplicates the services, functions and programs administered by any other state, federal, or other agency or entity.

The Board of Accountancy has sole authority to license and regulate certified public accountants. This function is not duplicated by any other state agency. The role of the federal government in regulating accountants is minimal. Federal agencies such as the Internal Revenue Service and the

Securities and Exchange Commission require that certain functions be performed by licensed accountants. In addition, financial reporting standards and accounting principles are set by the Financial Accounting Standards Board (FASB), by the Governmental Accounting Standards Board (GASB) and by the U.S. General Accounting Office (GAO). In their work, public accountants must adhere to these standards and principles. None of these entities licenses, or otherwise regulates accountants.

Issue (7) Handling of Complaints

Evaluate the efficiency with which formal complaints, filed with the agency concerning persons or industries subject to the regulation and administration of the agency under review, have been processed.

We randomly sampled 67 accountancy board complaints for FY 87-88 through mid February 1991, representing 25% of the total 267 complaints for the time period. We found that complaints were investigated in accordance with law and policy.

Twenty-one complaints involved firms and accountants who had received "needs improvement" or "substandard" ratings on their audits as reviewed by the board's volunteer reviewers. For most of those licensees, the board required additional hours of continuing professional education courses.

Issue (8) Compliance With the Law

Determine the extent to which the agency under review has complied with all applicable state, federal and local statutes and regulations.

The Board of Accountancy is regulated only by state statutes and regulations. We reviewed all statutes and regulations pertaining to the functions and duties of the board, and reviewed the board's records to determine compliance. We found no evidence of material noncompliance.

Sunset Issues

Schedule of Fees FY 90-91

	Fee
Certified Public Accountant	
Initial CPA Exam	\$140
Application Fee	\$20
License — Initial and Renewal	\$80
Public Accountant	
License Renewal Fee	\$80
Accounting Practitioner	
Exam (2 subjects)	\$100
Application Fee	\$20
License — Initial and Renewal	\$80
Processing Fee ^a	\$50
Permit for Non-Residents	
Individual	\$60
Partnership	\$120

^a This fee is required when an applicant obtains an AP license through education rather than through the exam. It includes the \$20 application fee.

Source: Board of Accountancy

Board Comments

South Carolina Board of Accountancy

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FRED E. STUART, CPA
Director

May 28, 1991

Mr. George L. Schroeder, Director
Legislative Audit Council
400 Gervais Street
Columbia, SC 29201

Dear Mr. Schroeder:

The South Carolina Board of Accountancy has received a draft copy of the report on the Sunset Review Audit completed recently. The draft report was discussed by the Board in closed session at its meeting on May 23, 1991. The following comments are made in response to the recommendations made in the report:

LICENSING OF ACCOUNTING PRACTITIONERS

In the Board's opinion the licensing of Accounting Practitioners should be continued.

There is a problem in South Carolina and other states involving unlicensed persons offering accounting and tax services to the public which they are not competent to perform. It is in the best interest of the public for the state to have a class of licensed accountants who are subject to continuing education and a code of ethics and who have sufficient education to perform these services. Accounting Practitioners perform many of the same services as CPAs and PAs but they may not conduct audits and they may not render an opinion on financial statements. They are subject to board discipline in cases of incompetence or violation of ethics. This would not be the case if they were not licensed.

PUBLIC REPRESENTATION ON BOARD

In the Board's opinion the provision in Section 40-1-80 is adequate to ensure consumer impact in board activities and should not be amended to provide for "two lay members."

Many consumers of public accounting services are persons who have been Certified Public Accountants. These consumers include corporate officers, such as treasurers, controllers, comptrollers, finance directors; government officials in similar positions; and attorneys engaged in corporate law and tax law practices. The presidents of some large banks and corporations were CPAs at one time. It does not appear to be in the best interest of the public to eliminate this large body of consumers from board membership merely because, at one time, they were

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Mr. George L. Schroeder, Director
May 28, 1991
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engaged in the accounting profession. If the person is not engaged in public accounting it should not matter whether he/she has turned in the CPA certificate or continues to hold an inactive certificate.

The board members are appointed by the Governor. The Governor screens potential board members to determine qualifications and should not be prohibited from appointing an otherwise qualified person merely because, at one time, he/she was a professional accountant. If a public member re-enters the accounting profession he/she would resign from the board.

It appears that the present provision in Section 40-1-80 would be better understood than the term "lay members." The board member mentioned in the report is a partner in a large law firm and he specializes in corporate and tax law. He has not turned in his CPA certificate but he does not practice public accounting and is not licensed to practice public accounting. Since he is not a professional accountant at present would he not be considered a "lay" person?

Your staff conducted the audit in a thorough and professional matter. The Board appreciates the opportunity to comment.

Sincerely,


Fred E. Stuart
Director

FES:mm

Board of Examiners for Nursing Home Administrators and Community Residential Care Facility Administrators

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Contents

Introduction

Summary

Due to recent statutory changes, we conducted a limited review of the State Board of Examiners for Nursing Home Administrators and Community Residential Care Facility Administrators (see below).

Background

Federal law and regulations require that states have licensure programs for nursing home administrators in order to receive federal medicaid funding. The South Carolina State Board of Examiners for Nursing Home Administrators was created in 1970. All nursing homes in South Carolina must be supervised by a nursing home administrator licensed by the board. As of June 30, 1990, there were 320 licensed nursing home administrators.

Act 605 of 1990 renamed the board the State Board of Examiners for Nursing Home Administrators and Community Residential Care Facility Administrators. The law, which took effect on December 25, 1990, substantially changed the membership of the board and extensively modified its functions and procedures.

In addition to the program for nursing home administrators, the law requires the board to administer a state licensing program for community residential care facility administrators. Community residential care facilities are homes that offer room and board and a degree of personal assistance for two or more persons aged eighteen or older. Beginning July 1, 1992, all community residential care facilities must be supervised by an administrator licensed by the board.

The new board is to be composed of nine members appointed by the Governor, with the advice and consent of the Senate, for three-year terms. The board must include three nursing home administrators, three community residential care facility administrators, one consumer, sponsor, or family member of a consumer of nursing home services, one consumer, sponsor, or family member of a consumer of residential care services, and one voting member of the Long Term Care Council. As of April 1991, new board members had not yet been confirmed, and implementation of the new provisions had not yet begun.

Audit Scope

The purpose of the sunset process is to evaluate the need for continuation, reorganization or termination of an agency. The information which could be obtained from a full sunset review would not be useful in the current situation, where the General Assembly has so recently determined that a substantial reorganization of the board and its functions was needed. The scope of this sunset review has therefore been narrowed. In general, we did not review the prior board's operations or compliance with statutory provisions which are no longer in effect.

Sunset Issues

Issue (1) Effects of Regulation

Determine the amount of the increase or reduction of costs of goods and services caused by the regulations promulgated by and the administering of the programs or functions of the agency under review.

The State Board of Examiners for Nursing Home Administrators and Community Residential Care Facility Administrators does not regulate the prices that consumers pay for nursing home or community residential care facility services. Nursing home administrators licensed by the former board pay examination and licensure fees. License, exam and application fees collected by the board averaged \$52,000 per year for FY 85-86 through FY 89-90. Medicaid-approved nursing homes are permitted to include licensure fees and expenses of obtaining the required continuing education as medicaid-reimbursable costs. This distributes the costs of the licensure program to taxpayers.

We found no evidence to indicate that the licensure program for nursing home administrators has resulted in questionable limits to competition, unreasonable barriers to entering the profession, or has significantly affected the costs of nursing home services. Community residential care facility administrators are not required to become licensed until July 1, 1992. The effect of this licensure program on the costs of services cannot yet be fully assessed.

Issue (2) Impacts of Deregulation

Determine the economic, fiscal and other impacts that would occur in the absence of the regulations promulgated by and the administering of the programs or functions of the agency under review.

The General Assembly recently determined that a substantial reorganization of the nursing home administrators board and its functions was needed; as a result, a comprehensive evaluation of the impact of deregulation of the profession is not appropriate at this time.

Act 605 of 1990 reorganized the former State Board of Examiners for Nursing Home Administrators. The new law amended the licensing program for nursing home administrators and expanded the scope of the board to provide for the regulation and licensing of community residential care facility administrators. As of April 1991, the new provisions had not yet been implemented. Community residential care facility administrators are not required to be licensed until July 1992.

We also noted that federal law and regulations require that states must have a program for licensing nursing home administrators in order to receive federal medicaid funds.

Issue (3) Administrative Costs

Determine the overall costs, including manpower, of the agency under review.

The State Board of Examiners for Nursing Home Administrators and Community Residential Care Facility Administrators has not promulgated fees for its licensees. As of April 1991, one administrative specialist was employed by the board. The budget table for the former Board of Examiners for Nursing Home Administrators is presented for information only (see Table D.1).

Table D.1: Source of Revenues, Expenditures and Appropriations, Former Board of Nursing Home Examiners

	FY 85-86	FY 86-87	FY 87-88	FY 88-89	FY 89-90
Revenues					
License Fees	\$26,250	\$30,500	\$41,800	\$42,381	\$40,238
Exam Fees	\$3,895	\$4,840	\$9,250	\$8,920	\$6,450
Application Fees	\$5,525	\$8,400	\$11,750	\$9,750	\$10,195
Misc. Fees ^a	\$8,515	\$7,150	\$7,310	\$8,225	\$9,210
Other Revenue	\$65	\$105	\$140	\$170	\$646
Total	\$44,250	\$50,995	\$70,250	\$69,446	\$66,779
Expenditures					
Personal Services	\$32,221	\$32,160	\$35,632	\$37,622	\$40,456
Other Operating Expenses	\$10,596	\$12,734	\$18,250	\$16,372	\$20,489
Employee Benefits	\$5,389	\$5,441	\$6,121	\$6,689	\$7,917
Total	\$48,206	\$50,335	\$60,003	\$60,683	\$68,862
State Appropriation	\$51,477	\$52,100	\$60,629	\$61,903	\$70,934

^a Miscellaneous fees include fees for approval of continuing education programs, late fees and fees for transfers of information.

Source: State Budget and Control Board documents.

We noted that the board's revenues did not meet state Appropriation Act requirements for FY 88-89, when board revenues were 112% of the board's state appropriation, or FY 89-90, when revenues were 94% of the board's appropriation. For those years, state Appropriation Acts required that occupational and professional licensing boards generate revenue equal to 115% of their appropriations.

Recommendation

The State Board of Examiners for Nursing Home Administrators and Community Residential Care Facility Administrators should review the former board's fees in conjunction with past and projected revenues. The board should promulgate fees that will result in sufficient revenues to comply with statutory requirements.

Issue (4) Efficiency of Administration

Evaluate the efficiency of the administration of the programs or functions of the agency under review.

We conducted a review of the former board's implementation of recommendations made in our 1985 review. The board addressed several of the issues related to administrative efficiency by establishing policies and procedures. For example, the board established policies for administering its continuing education program and for processing complaints. The board also executed cooperative agreements for sharing complaint information with the Department of Health and Environmental Control (DHEC) and with the state ombudsman's office.

We noted that the new board will need to establish policies and procedures to implement the amended statutory provisions, especially where former provisions were extensively revised. The board will need to promulgate regulations and policies for the licensure of community residential care facility administrators. Though the policies and procedures of the former board will not necessarily be adopted by the new board, the new board should review these policies, as well as the recommendations suggested in our 1985 audit.

Recommendation

The Board of Examiners for Nursing Home Administrators and Community Residential Care Facility Administrators should review the regulations, policies and procedures implemented by the former board in conjunction with the new statutory requirements. The board should review the recommendations from previous audits as it promulgates regulations and establishes written procedures to implement the new and amended licensing programs.

Issue (5) Public Participation

Determine the extent to which the agency under review has encouraged the participation of the public and, if applicable, the industry it regulates.

We did not review the former board's public participation activities because the board will be replaced with a substantially reorganized new board. When appointed, the new board should address the following area.

Telephone Directory Listings

Both the state government and city of Columbia telephone directories have a listing for the "State Board of Examiners for Nursing Home Administrators." These listings should be updated to reflect the addition of community residential care facility administrators.

Recommendation

The Board of Examiners for Nursing Home Administrators and Community Residential Care Facility Administrators should have the listings in the state government and city of Columbia telephone directories updated to reflect the new name of the board.

Issue (6) Duplication of Services

Determine the extent to which the agency duplicates the services, functions and programs administered by any other state, federal, or other agency or entity.

The board does not duplicate the services, functions and programs of any other state, federal or local government entity. The former board was the only agency in South Carolina responsible for licensing nursing home administrators. Community residential care facility administrators were not licensed or regulated by any government agency prior to the 1990 law establishing the new board.

Complaint investigations of licensees of the former board have been handled by the Department of Health and Environmental Control (DHEC) and the state ombudsman's office. As amended in 1990, §40-35-131 of the South Carolina Code of Laws states, in part, that "... a committee of the board will conduct an initial review and an investigation..." with regard to complaints. If the board begins conducting investigations on its own, there is a potential for duplication with the functions of DHEC and the state ombudsman's office. However, the board's investigations could focus specifically on administrators while DHEC would continue its investigations of facilities. The agencies could continue to share relevant information.

Issue (7) Handling of Complaints

Evaluate the efficiency with which formal complaints, filed with the agency concerning persons or industries subject to the regulation and administration of the agency under review, have been processed.

The 1990 law establishing the State Board of Examiners for Nursing Home Administrators and Community Residential Care Facility Administrators contains very detailed new standards for complaint processing, investigations and disciplinary proceedings. The previous State Board of Examiners for Nursing Home Administrators did not itself investigate complaints against administrators, but reviewed reports of investigations conducted by DHEC and

the state ombudsman's office to determine if disciplinary action against administrators was warranted. The new law gives the board increased responsibility for complaint investigations, expands the categories of misconduct that are grounds for disciplinary action, and also gives the board a variety of disciplinary options, including the authority to impose fines on administrators.

The previous board's authority ended in December 1990, and, as of April 1991, no new board had been appointed; there has been no authority to act on complaints during this period. We concluded that it would not be useful to audit the previous board's compliance with laws and procedures which have been substantially changed.

Issue (8) Compliance With the Law

Determine the extent to which the agency under review has complied with all applicable state, federal and local statutes and regulations.

The enabling legislation for the former Board of Examiners for Nursing Home Administrators was substantially changed effective December 25, 1990 with the establishment of the new Board of Examiners for Nursing Home Administrators and Community Residential Care Facility Administrators. We did not audit the former board's compliance with statutory provisions since they are no longer in effect and the regulations may soon be superseded. (Nursing home administrators are to follow the previous licensure requirements until new regulations are promulgated, but no later than July 1, 1992.) In addition, as of April 1991, no board had been appointed to implement the new provisions.

Federal laws and regulations, however, are not affected by any change in state laws. Federal regulations require that states have a licensure program for nursing home administrators in order to qualify for federal medicaid funds. Federal regulations set standards for state licensure programs. Therefore, we reviewed applicable federal regulations pertaining to this board.

Board Composition

Our 1985 audit considered the question of whether the former board's requirement for a consumer member resulted in non-compliance with federal regulations. Normally, we recommend that professional and occupational regulatory boards have public members to provide a point of view otherwise absent on a board comprised solely of persons representing the regulated occupation.

However, federal regulation 42 CFR §431.706 states the following requirements for state licensing boards for nursing home administrators:

The board must be composed of persons representing professions and institutions concerned with the care and treatment of chronically ill or infirm elderly patients . . . for purposes of this section, nursing home administrators are considered representatives of institutions.

As amended in 1990, §40-35-20 of the South Carolina Code of Laws states the board should be composed of nine members and one ex-officio member. Seven of those members represent professions and institutions as defined in federal regulations. The remaining two members must be a consumer, sponsor or family member of a consumer of nursing home services and a consumer, sponsor or family member of a consumer of community residential care services. The ex-officio member is the Commissioner of the Department of Health and Environmental Control or his designee.

As defined by §40-35-10, a "consumer" is a person who is or has been a resident of a nursing home or community residential care facility. A "sponsor" is a person who is financially or legally responsible for an individual currently residing in a nursing home or residential care facility.

The board received legal advice in September 1990 that concluded that the board's composition could be considered to be in compliance with federal regulations. We recommend that the board obtain further clarification on this issue.

Recommendation

The Board of Examiners for Nursing Home Administrators and Community Residential Care Facility Administrators may wish to request an Attorney General's opinion to determine if the board's composition is in compliance with federal regulations.

Board Comments

Board Comments

SOUTH CAROLINA STATE BOARD OF EXAMINERS FOR
NURSING HOME ADMINISTRATORS AND COMMUNITY RESIDENTIAL CARE FACILITY ADMINISTRATORS

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May 21, 1991

Mr. George L. Schroeder
Director
Legislative Audit Council
400 Gervais Street
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Dear Mr. Schroeder:

The State Board of Examiners for Nursing Home Administrators and Community Residential Care Facility Administrators appreciates this opportunity to respond to the Legislative Audit Council's report, and I respectfully submit the following comments on their behalf for the Audit Council's consideration.

Promulgating Fees That Will Result in Sufficient Revenues

In July, 1990, the former Executive Director met with Mr. Edgar A. Vaughn, State Auditor, to discuss the financial history and direction of the agency, and specifically, the Appropriation Act. It was Mr. Vaughn's recommendation that the Board take the following actions.

1. The Board should assign one annual renewal date for all licensees.

In the past, licensees renewed biennially in June and December. It required four renewal dates (two years) to completely update the roster of licensees. The fees from these renewals were deposited into the current fiscal year; yet the impact of two-year renewal fees impacted the following year.

The Board followed Mr. Vaughn's recommendation and assigned the date of July 1 as the annual renewal date for all licensees. Any licensees registered by examination during a fiscal year would be pro-rated the annual fee. Upon the renewal date the new licensees would renew their licenses for a full year.

2. The Board should begin deferring revenue.

In the past, biennial license renewal fees and continuing education fees were deposited into the current fiscal year's revenue, regardless of the proximity of the end of the fiscal year.

The Board followed Mr. Vaughn's recommendation and began deferring revenue of those services that stretched between fiscal years. Fees for continuing education received after January 1 were deferred and deposited into the next fiscal year's general revenue account.

As the board already followed the recommendation of annual renewal to keep the revenue in the current fiscal year, there was no need to defer renewal fees.

These two measures brought the Board closer to compliance with generally accepted accounting practices. However, when the Board deferred revenue, it decreased the total revenue that belonged to the current fiscal year. Therefore, when the board deferred revenue, it could not meet the Appropriation Act requirements. This was brought to Mr. Vaughn's attention. Mr. Vaughn empathized with the agency director and recommended that, in addition to the prior recommendation, the Board take action to increase the licensing fees. This action would increase revenues and bring the Board into full compliance with the Appropriation Act.

The Board followed Mr. Vaughn's recommendation and passed a motion in October, 1990 to increase fees. However, the State Board of Examiners for Nursing Home Administrators was to be terminated on December 25, 1990 by Act 605 and replaced by the State Board of Examiners for Nursing Home Administrators and Community Residential Care Facility Administrators. With this in mind, the former Board decided that the new Board would have a greater opportunity to successfully promulgate new regulations, including the fee increase.

The terminated board began the preliminary steps to comply with the Appropriation Act. Further action, including new regulations, will be taken once the new Board is in place.

Of course, it should be noted that Act 605 requires that the new Board administer a state licensing program for community residential care facility administrators. Presently, there are at least 350 possible applicants. The potential fee pool and revenues from these applicants would more than double the Board's revenue, automatically bringing the Board into full compliance with the Appropriation Act. The state licensing program for community residential care facility administrators should be in place by July 1, 1992.

Reviewing Former Board Regulations, Policies, Procedures, and Recommendations

The State Board of Examiners for Nursing Home Administrators was terminated on December 25, 1990 and replaced by the State Board of Examiners for Nursing Home Administrators and Community Residential Care Facility Administrators. The appointees to the new Board have yet to be confirmed by the Senate Legislature.

Once the new Board is in place, it is very likely that the financial, historical, and legal history of the former Board will be examined in detail to provide assistance in promulgating regulations and establishing written procedures to implement the new and amended programs.

Updating Listings in Telephone Directories

The State Board of Examiners for Nursing Home Administrators and Community Residential Care Facility Administrators began on December 25, 1990.

Since that date, the state government telephone directory for 1991 has been edited to reflect the name change. The city of Columbia telephone directory will also be updated to reflect the name change in time for the next printing.

Determining if the Board Composition is in Compliance with Federal Requirements

The composition of the new board was determined by the Senate Medical Affairs Committee at the time that the new Statute, Act 605, was written to establish the State Board of Examiners for Nursing Home Administrators and Community Residential Care Facility Administrators.

This response is being submitted with anticipation that it will provide insight into the functions of the State Board of Examiners for Nursing Home Administrators and Community Residential Care Facility Administrators.

Very truly,

A handwritten signature in cursive script, appearing to read "Preston T. Cantrell".

Preston T. Cantrell
Interim Executive Director

/kb

Respiratory Care Committee

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Contents

Introduction

Summary

The Respiratory Care Committee, an advisory committee to the State Board of Medical Examiners, has responsibility for the certification program for respiratory care practitioners. We reviewed the laws and operations of the committee and concluded that title protection for respiratory care practitioners benefits the public and should be continued. In general, the program is administered efficiently. However, fees charged to practitioners have been excessive.

Background

Respiratory care, or respiratory therapy, is the health profession which provides educational, therapeutic, or diagnostic procedures used in the prevention, detection, and management of deficiencies or abnormalities of the cardiopulmonary system. For example, respiratory therapists manage life support systems, administer techniques for the aid of breathing, carry out pulmonary function studies, and work in pulmonary rehabilitation programs.

The South Carolina certification program for respiratory care practitioners was created by the Respiratory Care Practice Act of 1986. This Act established the Respiratory Care Committee, an advisory committee to the State Board of Medical Examiners. The board appoints the nine committee members who serve four-year terms. Five of the committee members must be respiratory care practitioners with at least five years experience, three must be physicians who have special interest and knowledge in respiratory problems and one must be a consumer.

The Respiratory Care Committee administers the certification program in conjunction with the medical board. The committee is responsible for recommending applicants for certification, and recommending regulations and continuing education requirements for the program. The committee is also the hearing body for disciplinary cases involving respiratory therapy practitioners.

The law that established the respiratory care certification program is a title protection act; it does not prohibit anyone from practicing respiratory therapy. Rather, it restricts the use of certain job titles to those who have obtained certification. In general, title protection provides information to consumers, communicating that those who call themselves by the title have met certain standards. The titles that are protected by this law are "respiratory therapy technician," "respiratory therapist," and "respiratory

care practitioner." Only those who are certified by the program may use these titles in South Carolina.

The committee began certifying applicants in 1987. As of June 30, 1990, there were 939 certified respiratory care practitioners.

Sunset Issues

Issue (1) Effects of Regulation

Determine the amount of the increase or reduction of costs of goods and services caused by the regulations promulgated by and the administering of the programs or functions of the agency under review.

The Respiratory Care Committee does not regulate the prices that consumers pay for respiratory care services. Most (95%) of the practitioners certified in South Carolina are employed by hospitals and do not charge directly for their services. We could find no evidence that certification has affected practitioners' salaries or has had any effect on the costs of respiratory services.

We also reviewed whether certification has resulted in any unnecessary barriers to entry into the profession or restriction of trade. We found no evidence that the committee's requirements for certification are unnecessarily restrictive. We did find that fees charged for certification are unnecessarily high (see p. E-7). However, since the law is a title protection law, it does not impose restrictions on professionals who practice the profession without certification.

Issue (2) Impacts of Deregulation

Determine the economic, fiscal and other impacts that would occur in the absence of the regulations promulgated by and the administering of the programs or functions of the agency under review.

We found limited economic and fiscal impact that would occur in the absence of title protection for respiratory care practitioners. Practitioners would no longer be subject to fees. However, we found no evidence that the certification of respiratory practitioners has affected the cost of respiratory services. The number of persons permitted to practice respiratory care would not change, since title protection does not establish any barriers to performing respiratory care services.

We also evaluated other impacts that would occur in the absence of the program. We concluded that the likelihood of public harm from incompetent respiratory care is decreased by the certification program, and recommend that it continue. Issues concerning the regulation of this profession are discussed below.

Regulation of Respiratory Care Profession

The recognition of respiratory therapy as an allied health profession is relatively recent. There has been a movement toward state regulation of the profession in the 1980's. According to a 1990 Council of State Governments publication, 21 states now regulate respiratory care professionals. In addition to South Carolina, the southeastern states of Florida, Georgia, Tennessee and Virginia have enacted regulatory programs for respiratory professionals since 1984.

However, the need for regulation of respiratory therapists has not been universally accepted. The 1989 final assessment report of the North Carolina legislative committee on new licensing boards recommended against regulation of the profession.

The Case Against Regulation

State regulation is called for when consumers need protection from harm that could be caused by incompetent practice of a profession. If there are other means by which consumers are protected, it is less necessary for the state to be involved. In the case of respiratory therapy, it should be pointed out that respiratory therapists and technicians do not work autonomously. They work under the direct supervision of physicians. Also, most respiratory care practitioners are not hired by individual consumers. In South Carolina, 95% work for hospitals, and hospitals should have the necessary expertise to evaluate the competency of practitioners they employ.

The existence of state certification is sometimes thought necessary to provide consumer information about a profession, a "seal of approval" or way for the public to determine that someone is qualified. In the field of respiratory care, the National Board for Respiratory Care (NBRC) administers a private certification program. The NBRC's credentials provide a means for consumers to recognize qualified respiratory practitioners in the absence of state regulation.

Advantages of Title Protection Program

Respiratory therapists practice in life threatening situations, such as those involving cardiopulmonary resuscitation or the management of life support systems. Incompetent practice of the profession could result in serious harm to patients.

While no one is required to obtain certification to practice the profession, 939 respiratory care practitioners had been certified in South Carolina as of June 30, 1990. To become certified, a practitioner must pass a NBRC standardized examination, developed by testing professionals to ensure that it is relevant to job performance. To take the exam, a practitioner must have graduated from an approved educational program. To retain certification, a practitioner must participate in 15 hours of approved continuing education each year. In the absence of the certification program, it seems likely that fewer practitioners would be motivated to take the NBRC exam or to participate in continuing education programs.

The certification program also provides a means to protect the public from unsuitable practitioners. The Respiratory Care Committee has recommended that certification be denied or issued conditionally to applicants who had substance abuse problems or psychiatric illness. The complaint investigation process offers another way to monitor the fitness of practitioners. While practitioners whose certification is revoked are not prohibited from practicing the profession, the investigative and monitoring process itself could have a positive effect.

It would be difficult to prove that certified practitioners are more competent than those who are not certified. However, it seems likely that the certification program has a positive effect on professional competence, and as a result, the danger of harm to the public from incompetent practice is diminished. Since the program cannot be shown to result in increased public costs, these probable benefits justify its continued existence.

Issue (3) Administrative Costs

Determine the overall costs, including manpower, of the agency under review.

The Respiratory Care Committee is administered by the State Board of Medical Examiners and does not have a separate state appropriation or operating budget. Therefore, it is not required to comply with Appropriation Act provisos requiring regulatory boards to generate revenues that are 110%-115% of their appropriations. However, §40-47-650 of the South Carolina Code of Laws requires the committee to reimburse the state to the extent feasible for the cost of services rendered by the board.

The committee has generated revenues substantially in excess of costs incurred by the program, as determined by the medical board (see Table E.1). Staff at the medical board estimate that the employee who administers the program spends approximately 55% of her time performing respiratory care program duties.

Table E.1: Source of Revenues and Expenditures

	FY 86-87	FY 87-88	FY 88-89	FY 89-90
Revenues				
Certification Fees	\$86,000	\$55,885	\$57,390	\$61,785
Total	\$86,000	\$55,885	\$57,390	\$61,785
Expenditures				
Estimated Expenditures ^a	\$21,921	\$22,346	\$22,565	\$24,826
Total	\$21,921	\$22,346	\$22,565	\$24,826

^a Expenditures include personal services (.55 FTE), travel, rent, equipment, printing, postage and supplies.

Source: State Board of Medical Examiners

Fee Structure Needs Review

The fees charged for certification of respiratory care practitioners are higher than necessary to meet expenses and higher than fees charged in other southeastern states that regulate the profession.

**Table E.2: Schedule of Fees
FY 90-91**

	Fee
Application Fee	\$100
Renewal (Annual)	50
Limited Certificate	50
Limited Renewal (One Time)	50
Limited Upgrade to Permanent	50
Reactivation	200
Penalty for Late Renewal	50

Revenues from the fees paid by respiratory care practitioners have been more than twice the expenses incurred by the board in administering the program (see Table E.1). The fees are greater than fees charged in the other four southeastern states that regulate the profession (see Tables E.2 and E.3). The respiratory care fees are greater than those paid by nurses in South Carolina. In addition, respiratory care practitioners must pay a \$50 late fee if their renewals are one day late. By contrast, physicians pay an extra \$10 for each month they are late.

**Table E.3: Southeastern States
Respiratory Care Fees**

State	Application	Renewal
Florida	\$40	\$35 ^a
Georgia	50	50 ^a
South Carolina	100	50 ^b
Tennessee	30	30 ^a
Virginia	100	25 ^b

^a Biennial
^b Annual

In addition to the \$100 application fee, an applicant for certification in South Carolina must pay the National Board for Respiratory Care (NBRC) to take the Certification Examination for Entry Level Respiratory Therapy Practitioners (CRTT). A passing score on this exam is required for certification. The 1991 NBRC exam fee is \$75 (\$50 for each subsequent testing).

The certification fees could prevent some respiratory professionals from seeking certification. We noted five complaints about fees the board has received from respiratory professionals since 1987, and the Respiratory Care Committee has recommended that the board lower some of the fees. The board has not taken action.

Recommendation

The South Carolina State Board of Medical Examiners should review fees charged to regulate respiratory care practitioners. The board should promulgate regulations to set fees at a level that will reimburse the board for the costs of regulation without generating excess revenues.

Issue (4) Efficiency of Administration

Evaluate the efficiency of the administration of the programs or functions of the agency under review.

We reviewed the administration of the respiratory care certification program by examining written policies and procedures and other documentation used in the certification process. We also reviewed a random sample of 49 practitioner files for compliance with requirements and evidence of efficiency in the administrative process.

We did not identify any problems in the certification process; all evidence indicated that the program is efficiently administered in compliance with statutory requirements.

Contents of Annual Report

Statistical information about the certification of respiratory care practitioners is not available in the South Carolina occupational and professional licensing boards annual reports. The State Board of Medical Examiners does not submit the number of licensed or certified physicians, physician assistants and respiratory care practitioners, but combines the numbers for these groups when reporting statistics.

As a result, information about each professional group is inadequate and the board's statistics may be misleading. For example, a reader might assume the board statistics reflect the number of licensed physicians, when in fact, for FY 89-90, there were 939 respiratory care practitioners represented in the board's total of 7,578 licensees.

A staff member at the Division of Research and Statistics stated that the medical board had been instructed to submit combined data for the annual reports. However, the reports can easily be changed to reflect statistics for each of the regulated professions.

Recommendation

The State Board of Medical Examiners should submit licensing statistics for each of its regulated professions to be published in the occupational and professional licensing boards annual reports.

Issue (5) Public Participation

Determine the extent to which the agency under review has encouraged the participation of the public and, if applicable, the industry it regulates.

The Respiratory Care Committee has one consumer member, in accordance with the composition of the committee specified by §40-47-540 of the South Carolina Code of Laws. The committee meets four times a year, and has complied with statutory requirements for the announcement of board meetings. The committee publishes an annual directory of respiratory care, which is available to the public and contains a roster of certified respiratory care practitioners, relevant law and regulations, and a listing of committee members.

However, there is no listing for the committee in the city of Columbia telephone directory. This information could give the public easier access to information about the program.

Recommendation

The State Board of Medical Examiners should list the Respiratory Care Committee separately in the public telephone directory.

Issue (6) Duplication of Services

Determine the extent to which the agency duplicates the services, functions and programs administered by any other state, federal, or other agency or entity.

We found no evidence that the Respiratory Care Committee duplicates the services, functions, or programs of any other government agency. The committee advises the State Board of Medical Examiners, which is the only entity which certifies respiratory care practitioners in South Carolina. Other health professionals, such as nurses, may perform some respiratory care functions. However, no one is required to be certified as long as he doesn't represent himself as a respiratory care practitioner.

By placing the committee within the medical board, the General Assembly avoided costs that would have been incurred in establishing a separate board.

Issue (7) Handling of Complaints

Evaluate the efficiency with which formal complaints, filed with the agency concerning persons or industries subject to the regulation and administration of the agency under review, have been processed.

From FY 87-88 through FY 89-90, the State Board of Medical Examiners received seven complaints concerning respiratory care practitioners, or uncertified persons alleged to have represented themselves as respiratory professionals. The board follows the same complaint investigation procedures for all the professions it regulates, including respiratory care practitioners, physicians and physician assistants. When the complaint investigation is complete, the board's attorney recommends whether the board should lodge a formal complaint or the complaint should be dismissed.

We reviewed the case files for each of the seven respiratory care complaints. One of the complaints resulted in a voluntary surrender of certification, and the other six were dismissed by the board. We found the complaints were

investigated thoroughly and resolved appropriately, within a reasonable period of time.

Issue (8) Compliance With the Law

Determine the extent to which the agency under review has complied with all applicable state, federal and local statutes and regulations.

The Respiratory Care Committee is an advisory committee responsible to the South Carolina State Board of Medical Examiners. The committee and the board are governed by South Carolina law in carrying out the program for certification of respiratory care practitioners. We found two problems involving compliance with state law, as discussed below.

Establishment of Respiratory Care Practitioner Fees

We reviewed the fees paid by respiratory care practitioners and found them to be excessive (see p. E-7). We also noted that the State Board of Medical Examiners has not established the fees for limited certification according to state law. We recommend the board use consistent procedures for establishing the respiratory care practitioner fees.

The fee for a limited certificate as a respiratory care practitioner is \$50. This certificate is issued primarily for graduates of respiratory care education programs who have not yet passed the National Board for Respiratory Care exam. The limited certificate is good for six months, and can be renewed one time for a \$50 renewal fee. If someone holding a limited certificate passes the NBRC exam and upgrades her certificate to a permanent one, the board assesses a \$50 upgrade fee.

According to §40-47-655 of the South Carolina Code of Laws, a limited certificate can be issued and renewed "upon payment of a fee prescribed by the committee and approved by the board." According to §40-47-650, "The board and the committee shall prescribe fees in amounts recommended by the committee . . ." We found no evidence in committee or board minutes that the committee or the board prescribed or approved the limited certification and limited certification renewal fees. The committee established the limited upgrade fee as committee policy, with no board action.

The board promulgated Regulation 81-200, which established the committee's annual renewal, late and reactivation fees. However, the board approved the committee's initial application fee at a board meeting, and it has not been set in regulation. The promulgation of regulations for all of the committee's fees would be consistent and ensure that all fees have been established in accordance with state law.

Recommendations

The State Board of Medical Examiners should ensure that all fees for respiratory care practitioners are established in accordance with state law.

The State Board of Medical Examiners should consider promulgating regulations for all respiratory care practitioner fees.

"Good Moral Character" Requirement

According to §40-47-600 of the South Carolina Code of Laws, applicants for certification as respiratory care practitioners must pass the National Board for Respiratory Care exam and be of "good moral character." As written, the requirement for "good moral character" is vague and not clearly related to an applicant's competence. The committee has recommended that certification be denied, or granted on a conditional basis, for applicants who had problems with alcohol abuse or psychiatric illness. While these conditions could impede a practitioner's ability to perform his job, they are not evidence of lack of moral character.

Recommendation

The General Assembly may wish to amend §40-47-600 to define "good moral character" and any other characteristics related to an applicant's capability for job performance which are required for certification.

Sunset Issues

Board Comments

Board Comments



STEPHEN S. SEELING
EXECUTIVE DIRECTOR

State Board of Medical Examiners
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June 13, 1991

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HAND DELIVERED

Mr. George L. Schroeder, Director
Legislative Audit Council
400 Gervais Street
Columbia, South Carolina 29201

Dear Mr. Schroeder:

Thank you for the opportunity to provide comments on the audit of the Respiratory Care Committee. I wish to comment regarding the question of Respiratory Care Practitioner fees.

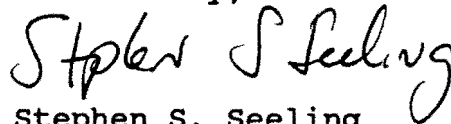
It is the Board's position that the Respiratory Care Practitioner fees are justified and appropriate. Respiratory Care fees represent a disproportionately low portion of this Board's required revenue. In Fiscal Year 89-90 (the last year of the audit), Respiratory Care Practitioners comprised approximately 12% of our total licensees. In that Fiscal Year, the Board's total revenue requirement, mandated by the 115% proviso, was \$875,099. Based on their percentage of total licensees, Respiratory Care Practitioners should have generated approximately \$105,012 in revenue (12% of \$875,099). In fact, Respiratory Care fees generated substantially less than that. Respiratory Care Practitioner revenue equalled \$61,785, only 7% of the Board's overall revenue requirement.

The figures used in the audit capture those agency expenses which are able to be prorated. They do not reflect, however, other expenses which are not readily quantifiable and therefore not represented in these statistics. By seeking to narrowly prorate Respiratory Care expenditures in isolation, the audit ignores the fact that the Respiratory Care Committee is part of the overall structure and function of the State Board of Medical Examiners. The Executive Director, Board Attorney, other staff and the Board itself play a critical role in regulating Respiratory Care Practitioners. None of this is accounted for in the audit's review.

Mr. George L. Schroeder
June 13, 1991
Page 2

Thank you again for your consideration. If I can be of further assistance, please do not hesitate to contact me.

Yours truly,

A handwritten signature in cursive script that reads "Stephen S. Seeling". The signature is written in dark ink and is positioned above the printed name and title.

Stephen S. Seeling
Executive Director

SSS:mlw

Board of Registration for Geologists

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Introduction

Summary

The South Carolina State Board of Registration for Geologists has responsibility for examining and registering professional geologists and geologists-in-training in South Carolina. We reviewed the laws and operations of the board and concluded that evidence is inconclusive about whether the registration of geologists is needed to protect the public. However, given the importance of protecting public health and safety by ensuring that competent professionals perform tasks involving environmental hazards, we recommend that the program be continued. We found that the board's travel expenditures have been excessive (see p. F-10), and that it has not effectively managed its contract for administrative services (see p. F-11). We also identified areas where the board has not complied with state law (see p. F-17) and noted that the board's program has restrictive features which could result in higher prices to consumers (see p. F-3).

Background

Geologists perform such activities as studying sites for waste disposal and nuclear power facilities; preparing plans for hazardous waste and groundwater contamination clean-up; monitoring ground water around landfills and nuclear power plants; and studying sites for placement of high-rise structures.

The State Board of Registration for Geologists was created in 1986, and consists of five members appointed by the Governor for five-year terms. The statutes require that the board be comprised of one academic geologist, one salaried company geologist, one independent or consultant geologist, a geologist from a state agency and a laymember who is not a geologist.

The law that established the board is both a general title protection act and a practice act for the public practice of geology. State law prohibits individuals who are not registered from implying or stating that they are registered professional geologists. The law does not prohibit anyone from practicing geology; rather, it restricts the use of the title, and restricts the public practice of geology, to those who have obtained certification.

The "public practice of geology" is defined by law as:

... the performance of geological service or work in the nature of consultation, investigation, surveys, evaluations, planning, mapping, and inspection of geologic work required for or supporting compliance with municipal, county, State of South Carolina, or federal regulations.

For example, a geologist performing work which is subject to regulations set forth by the South Carolina Department of Health and Environmental Control, such as the investigation of underground gasoline storage tanks, is considered to be in the "public practice of geology."

In addition to registering professional geologists, the board also registers otherwise qualified individuals without the required experience as geologists-in-training. As of August 1990, there were 690 registered professional geologists in South Carolina and 120 geologists-in-training. Most (542, or 79%) of the registered professional geologists did not reside in South Carolina, but in other states and countries.

Introduction

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Sunset Issues

Issue (1) Effects of Regulation

Determine the amount of the increase or reduction of costs of goods and services caused by the regulations promulgated by and the administering of the programs or functions of the agency under review.

The State Board of Registration for Geologists has no direct control over the prices charged by professional geologists. The board does impose costs on geologists through application, examination, and licensure fees (see p. F-21); however, we found no evidence that these fees significantly affect the price of services. We provide the board's fee schedule in Appendix F-1.

We found that the board's registration program has imposed some questionable restrictions on competition and barriers to entry in the profession, which could result in higher costs to consumers.

Temporary Permits

We identified some restrictive aspects of the board's provisions for temporary permits. According to §40-77-370(2) of the South Carolina Code of Laws, geologists not registered in South Carolina may obtain a temporary permit to perform services in the state, but may not practice under a temporary permit for more than 30 cumulative days a year. We found three potentially restrictive effects of the requirements for temporary permits:

- Geologists may only obtain temporary permits if they are registered in their home state. Thus, geologists whose home states do not register geologists may be denied the opportunity to provide geological services in the state.
- The cost of services for geologists working under temporary permits may be higher to offset the cost of the permit. The board charges \$30 per day for a temporary permit, with a minimum charge of \$250.
- Geologists not registered in South Carolina may be restricted from participating in on-going geological projects (projects that last longer than 30 days).

According to a board official, a strict interpretation of §40-77-370(2) requires that, to receive a temporary permit to perform services in South Carolina, the

applicant must be registered to practice in his own state. In August 1990, the board denied an individual's request for a temporary permit to practice in South Carolina, because according to board minutes, the individual listed his home state as Nevada, which does not register geologists. Although the applicant was registered in the state of Florida, the board denied his application, because he was not registered in his home state.

According to a board official, a company may avoid problems with temporary permits by hiring an individual registered in South Carolina, or by having one of its employees obtain registration. To obtain registration, an applicant must have the required education and work experience, and must obtain a score satisfactory to the board on the graduate record examination (GRE) in geology. In addition, the applicant must pass a second examination (Part II), currently written by a board committee and administered and graded by the board, which in part contains questions and practice sets on the geology and regulations of South Carolina.¹

Many geologists who practice in South Carolina do not live in the state. Seventy-nine percent of the board's registrants are from out-of-state or other countries. Most of the board's current registrants registered under "grandfather" provisions, which omitted examination requirements. However, the current registration requirements could impose significant barriers to geologists not residing in South Carolina.

Reciprocity

Section 40-77-210 of the South Carolina Code of Laws provides that a person licensed to practice geology in a state, territory or possession of the United States, or of any foreign country with similar licensing requirements may be licensed in South Carolina without further examination. However, the board has not yet exempted out-of-state registrants from examination.

¹The board has paid a consultant to produce a statistically valid Part II examination. As of April 1991, the process was not complete (see p. F-18).

According to a board official, the board is awaiting a resolution of the newly-formed Association of State Boards of Geology concerning acceptable, uniform reciprocity requirements among states. Therefore, applicants currently registered in other states are considered qualified to practice under temporary permits, but cannot become registered in South Carolina except by meeting the board's requirements.

Recommendations

The General Assembly may wish to consider amending §40-77-370 of the South Carolina Code of Laws to delete the requirement for registration in one's home state or country as a condition of obtaining a temporary permit. The General Assembly may also wish to consider amending §44-77-370 to allow the board to determine the time limits for practicing with a temporary permit on a case-by-case basis.

The board should implement §40-77-210 of the South Carolina Code of Laws.

Oral Examination

The State Board of Registration for Geologists has the authority to administer an oral exam to candidates for registration. Section 40-77-150 of the South Carolina Code of Laws provides that an applicant is eligible for registration if the applicant meets the appropriate education and experience requirements, ". . . and has passed the oral or written examinations required by the board."

According to board officials, oral exams were given during the grandfather period to evaluate applicants who had appropriate experience, but did not possess a degree in geology, and no applicants given oral exams were prohibited from obtaining registration.

Written, standardized exams are an efficient and effective way to test an individual's competency for registration. Oral exams may be unnecessarily restrictive, and are a subjective means of judging competency.

Recommendation

The General Assembly may wish to consider amending §40-77-150 of the South Carolina Code of Laws to delete the provision allowing the board to administer an oral examination as a condition of registration.

Issue (2) Impacts of Deregulation

Determine the economic, fiscal and other impacts that would occur in the absence of the regulations promulgated by and the administering of the programs or functions of the agency under review.

We found limited economic or fiscal impacts that would occur in the absence of title and practice protection for geologists. Geologists would no longer be subject to fees. Although we found that the board's registration program has imposed some questionable restrictions which could result in higher prices to the consumer, we found no evidence that the registration of geologists has significantly affected the cost of geological services (see p. F-3). At this time, it is premature to assess the impact of the registration program on public health, safety and welfare. We recommend that the board continue until these issues can be better determined.

Regulation of Geology Profession

According to a board member, state registration of geologists is relatively recent. A Council of State Governments publication lists 15 states that regulated geologists in 1990. In 1991, Wyoming also passed legislation to regulate geologists. In addition to South Carolina, the southeastern states of Florida, Georgia, North Carolina, Tennessee and Virginia have enacted regulatory programs for geologists. The Association of State Boards of Geology (ASBOG) was established in 1990, and currently has 14 member states, including South Carolina, Georgia, North Carolina, Tennessee and Virginia. According to a board official, the South Carolina board has been instrumental in establishing ASBOG.

Program Provisions

To become registered in South Carolina, an individual must have a geology degree from an approved college and at least five years full-time experience as a geologist. Applicants must also obtain a satisfactory score on the graduate record examination (GRE) in geology, and pass a second board examination, which includes questions concerning the geology of South Carolina and relevant regulations of agencies such as DHEC, the Water Resources Commission, the Land Resources Conservation Commission, and the Coastal Council. An otherwise qualified individual without five years experience may register as a geologist-in-training. Those who do not meet the board's education requirements must provide evidence of eight years experience in the field.

In addition, the board is in the process of establishing continuing education requirements for registration renewal, and has established a code of ethics for registrants.

The registration program also provides a means to monitor geologists' performance and investigate professional misconduct. The board has not received formal complaints (see p. F-17), so the effect of these provisions for ensuring professional competence cannot yet be determined.

Protection of the Public Health and Safety

During our review of registrant files (see p. F-11), we noted that the 38 registered geologists whose files we reviewed have performed such activities as:

- conducting site studies for the location of waste disposal and nuclear power facilities;
- investigating, assessing and designing hazardous waste and groundwater contamination clean-up programs;
- working on Superfund sites, including developing remedial action alternatives and preparing testimony for litigation;
- monitoring groundwater around landfills and nuclear power facilities;
- studying availability of water resources in regions of South Carolina;

- performing geological studies for placement of high-rise and multi-purpose structures;
- conducting oceanographic geological studies for naval sensor and weapon systems development; and
- performing sloping rock and soil stability studies.

An emphasis on environmental awareness in the interest of current and future public health and safety dictates that qualified professionals perform the above tasks. Although it would be difficult to prove that registered geologists are more competent than those who are not registered, it seems likely that the registration program has a positive effect on professional competence, and as a result, the danger of harm to the public from incompetent practice is diminished.

Need for State Regulation

It is also possible that other means exist to ensure that geologists are qualified, without the necessity for state regulation. For example, professionals at DHEC evaluate plans for geologic work based on the demonstrated competence of those who prepared the plans. Companies that offer geologic services would therefore be motivated to hire competent professionals to expand their business. An independent professional association, the American Institute of Professional Geologists (AIPG), certifies geologists based on degree and experience requirements. The AIPG has a code of ethics and encourages continuing education, but does not examine applicants.

At present, evidence of the need for state registration of geologists is inconclusive. However, given the importance of protecting the natural environment and assuring the competence of geologists who carry out environmentally sensitive projects, we recommend that the board's program continue.

Issue (3) Administrative Costs

Determine the overall costs, including manpower, of the agency under review.

The State Board of Registration for Geologists receives an annual appropriation from the General Assembly. It also collects revenues through licensing and other fees, which are deposited in the state's General Fund. For FY 87-88 through FY 89-90, the board met Appropriation Act requirements that revenue be equal to 115% of appropriations (see Table F.1).

**Table F.1: Source of Revenues,
Expenditures and Appropriations**

	FY 86-87	FY 87-88	FY 88-89	FY 89-90
Revenues				
License Fees	\$13,390	\$49,473	\$39,807	\$66,055
Application and Exam Fees	6,171	462	640	1,963
Miscellaneous Revenue	•	•	30	450
Total	\$19,561	\$49,935	\$40,477	\$68,468
Expenditures				
Personal Service	\$630	\$1,050	\$980	\$910
Other Operating Expenses	16,219	44,100	33,506	57,536
Total	\$16,849	\$45,150	\$34,486	\$58,446
State Appropriation	\$17,466^a	\$26,190	\$34,500	\$58,468

^a Initial funding for the board was transferred from the civil contingent fund after the board's inception in June 1986.

Source: South Carolina Budget and Control Board documents.

The board employs no staff, but has contracted with a private firm to perform its administrative and logistical support functions. This firm, which employs two full-time and one part-time employee, also performs support functions for two other professional and occupational licensing boards.

From FY 86-87 through FY 89-90, the board's expenditures increased from \$16,849 to \$58,446. The largest increases in expenditures resulted from increases in contractual services (from \$9,099 in FY 86-87 to \$37,486 in FY 89-90) and in travel (from \$2,484 in FY 86-87 to \$8,357 and \$7,065 in FY 88-89 and FY 89-90, respectively). We noted the board's travel expenditures have been excessive (see below) and it has not effectively managed its administrative services contract (see p. F-11).

Travel Expenditures

By scheduling board meetings out-of-state and in resort locations, the board has not demonstrated appropriate concern for cost effective management. From July 1987 through January 1991, 12 (33%) of 36 board meetings were held in in-state (6) and out-of-state (6) resort locations such as Hilton Head, South Carolina and St. Simons Island, Georgia. The board reimbursed travel expenses in full for board members, the board's contracted administrator and her employee.

From July 1987 through January 1991, the board held six board meetings, and spent over \$13,000 outside of South Carolina. For example, the board spent approximately \$2,000 to hold its May 1989 board meeting in Wilmington, North Carolina. From July 1987 through January 1991, the board also spent over \$16,000 on in-state travel, and held six board meetings at in-state resort locations such as Hilton Head and Litchfield Beach. For example, the board spent approximately \$2,000 to hold its August 1990 meeting in Litchfield Beach. The cost of the December 1990 board meeting held at the board's executive offices in Columbia was approximately \$250. We estimated that a weekend-long board meeting held in Columbia would cost approximately \$670, or \$1,330 less than the weekend meetings held in Wilmington and Litchfield Beach. By holding its weekend board meetings in Columbia, the board could possibly have saved as much as \$16,000.

Holding board meetings at out-of-state and in-state resort locations gives the appearance that the board is not conservatively administering state funds. In addition, public access to the board may be limited when the board meets in relatively remote or out-of-state locations (see p. F-15).

Recommendation

The State Board of Registration for Geologists should reevaluate its use of travel for board meetings and attempt to manage state funds in a cost-effective manner.

Issue (4) Efficiency of Administration

Evaluate the efficiency of the administration of the programs or functions of the agency under review.

The South Carolina State Board of Registration for Geologists was established in FY 86-87, and therefore has not been previously reviewed by the Audit Council. As part of our review, we examined 38 (5.5%) of 690 registered professional geologist files, and 6 (5%) of 120 geologist-in-training files. We found that all registrants met the requirements for registration and that all files contained the required supporting documentation.

We found several areas in which improvement is needed.

Contract Management

The board has not implemented appropriate controls in managing its contract for administrative support services. As a result, the contracted administrator has not been held accountable for excess compensation, and has received inappropriate reimbursement.

Payment for Excess Hours

The board has routinely approved payment for excess hours to the contracted administrator without adequate documentation concerning services performed. During FY 89-90, the board paid the contracted administrator \$25,776.50, which included payment for excess hours in the amount of \$11,376.50.

The board's contract for administrative services states that the contracted administrator was to provide 100 base service hours per month, for which she was paid \$1,200 per month, or \$14,400 for FY 89-90. The contract requires the contractor to maintain a record of all tasks and hours spent

conducting board business, and specifies the amount to be charged for various services performed in excess of the 100 base hours.

Board officials approved payments for excess hours with no supporting documentation for how the first 100 hours were spent, and inadequate documentation of tasks performed during the excess hours. During our review, we were unable to obtain time sheets or other documentation to support that excess service hours were performed, or a breakdown of how the contractor's bills for excess services were determined. According to a board official, the board does not require documentation to approve excess payments, and sometimes the secretary-treasurer signs vouchers in advance.

Sound business practice dictates that supporting documentation be reviewed prior to approval of payment for services. By not implementing sound contract management controls, the board has not ensured that payments for excess services were warranted.

Reimbursement for Relocation

We also found that the board's contracted administrator has moved her offices twice and charged the board, as well as two other boards, a pro rata share of moving expenses. In connection with the two moves, the board was charged \$297.89 for its share of the moving bill and \$1,076.50 for "excess hours . . . relocation." No breakdown of the excess hours was provided. The board has stated that the reimbursements for moving expenses were justified and mutually agreed upon prior to the moves.

According to an official with the State Budget and Control Board Division of General Services, "There is nothing in the contract that says the contractor can bill the agency for relocation. The contractor is required to provide administrative offices and in-house conference space for monthly meetings and special meetings in the metropolitan Columbia area as part of the base fee." By allowing reimbursement for unwarranted expenses, the board has not properly managed its administrative services contract.

Representation on Board Letterhead

We also noted that the contracted administrator and her accountant are represented on the board's letterhead as "executive director" and "accountant," respectively. However, the contract requires that neither the contractor or its employees shall be deemed board employees for any purpose, and that the contractor shall not represent itself or its employees as agents of the board.

Naming the independent contractor and its employees on the board's letterhead may imply to others that the contractor is an employee or agent of the board and, therefore, has the authority to enter into contracts on behalf of the board. The board could be held liable for contracts entered into with third parties that believe the contracted administrator has the powers normally granted to an executive director.

Recommendations

The State Board of Registration for Geologists should review the records of all tasks completed and hours spent conducting board business prior to approving payment to the contracted administrator for any excess services. The board should consult the Division of General Services for guidance in interpreting the contract or in implementing appropriate contract management controls.

The State Board of Registration for Geologists should request reimbursement for moving expenses charged by the private contracted administrator.

The State Board of Registration for Geologists should remove the names of the contracted administrator and her employee from the board's letterhead or list them as contact persons only.

Accounting Controls

In its report for the years ended June 30, 1989 and 1988, the State Auditor found the board was not depositing receipts in a timely manner. Our review indicates that the problem has not been resolved.

During the nine-month period between July 1990 and March 1991, the board made seven deposits. We found that the deposits were made an average of 48 days apart. We also found that, in some cases, checks were held for three months before being deposited. The average deposit was approximately \$9,600, but two of the seven deposits were for \$22,225 and \$31,810, respectively.

We also found that one employee handles all transactions involving cash receipts including recording receipts in the accounting records, preparing receipts for deposit, making deposits, reporting to the State Treasurer's Office and reconciling the accounting records.

Because cash is the asset which is most vulnerable to loss, adequate internal controls require that receipts be promptly recorded, and deposited on a daily basis if possible. In addition, the Appropriation Acts for FY 88-89 through FY 90-91 required that receipts be remitted to the State Treasurer "as collected," if possible, but "at least once each week." Adequate internal controls also require a separation of duties such that no one person controls all phases of any transaction.

Recommendations

The State Board of Registration for Geologists should ensure that its administrators deposit receipts daily. When collections are too infrequent for daily deposits, receipts should be secured and deposited at least once each week.

The State Board of Registration for Geologists should ensure that its contracted administrator implements adequate internal accounting controls.

Appointment of Board Members

The State Board of Registration of Geologists has a five-member board. During our review, we noted that appointments to the board have not been made in a timely manner. At present, three board members are serving with terms that expired on June 30, 1987, June 30, 1989 and June 30, 1990, respectively. The board has made requests to have the board members reappointed.

Board members are appointed by the Governor for five-year terms. The initial terms of board members were staggered, with term length ranging from one to five years. There is no limit on re-appointments.

Recommendation

The State Board of Registration for Geologists should continue to request new appointments when members' terms expire.

Issue (5) Public Participation

Determine the extent to which the agency under review has encouraged the participation of the public and, if applicable, the industry it regulates.

The South Carolina State Board of Registration for Geologists conducts meetings monthly. Public announcements of meetings are posted outside the door of the board's office, and news media are notified. We found some areas in which the board could increase opportunities for public participation.

Location of Board Meetings

The board has held meetings in out-of-state and in-state resort locations (see p. F-10). This practice could hinder, or have the appearance of discouraging, public participation.

Participation of Public Board Member

We also found that the board's current public member has not attended board meetings. We found that as of March 1991, the public member had not attended a board meeting since December 1988.

Section 40-77-30 of the South Carolina Code of Laws provides for one public member of the board. The board has had the same public member since its creation in 1986, although her term expired on June 30, 1987, and she has never been reappointed (see p. F-14).

Public oversight of board activities is decreased when public board members do not attend meetings and vote on issues considered by the board.

Roster of Registrants

The board charges \$50 for a roster of registered professional geologists and geologists-in-training. The printing cost to the board for the August 1990 roster was \$1.22 per copy. Charging \$50 to the public for a list of registrants is excessive and could discourage public participation.

Recommendations

The State Board of Registration for Geologists should hold meetings at locations which are easily accessible to the public.

The State Board of Registration for Geologists should request appointment of a new public member.

The State Board of Registration for Geologists should reduce the charge for a roster of registrants to reflect its printing costs.

Issue (6) Duplication of Services

Determine the extent to which the agency duplicates the services, functions and programs administered by any other state, federal, or other agency or entity.

The State Board of Registration for Geologists is the only agency which examines and registers qualified geologists in South Carolina.

The geology board and the State Board of Registration for Professional Engineers and Land Surveyors have recognized that there is some overlap in tasks and job functions performed by geologists and engineers. The two boards are in the process of developing a memorandum of understanding regarding the practice of engineering and the practice of geology.

Issue (7) Handling of Complaints

Evaluate the efficiency with which formal complaints, filed with the agency concerning persons or industries subject to the regulation and administration of the agency under review, have been processed.

Since its inception in 1986, through February 1991, the State Board of Registration for Geologists received no formal complaints.

Although the statutes and the board's bylaws provided to registrants state that complaints may be filed with the board, and that a register of disciplinary action will be maintained, the board has no formal, written procedures for recording and handling complaints.

Recommendation

The State Board of Registration for Geologists should establish formal, written procedures for recording and handling complaints.

Issue (8) Compliance With the Law

Determine the extent to which the agency under review has complied with all applicable state, federal and local statutes and regulations.

The South Carolina State Board of Registration for Geologists was created under and is subject to South Carolina laws and regulations. We found that the board has not always operated in accordance with state laws and regulations.

Testing Consultant Contract

The board has acquired the services of a testing consultant through an inappropriate sole source procurement. Further, the board has no written contract with the consultant. Although as of March 1991, the consultant's work was not complete, the board had paid the consultant in full by July 1990.

The board procured the consultant to design a statistically valid examination on the geology of South Carolina. Supporting documentation for the procurement provided by board officials consisted of the standard "justification for sole source procurement" form and an unsigned proposal dated April 1990. There is no written contract. The board paid the consultant \$6,000 (the total costs estimated in the proposal) over a three-month period ending July 1990, and has also reimbursed travel expenses in the amount of \$493. As of March 1991, approximately one-half of the proposed tasks were complete.

An official with the audit and certification section of the Division of General Services reviewed the board's justification for sole source procurement and cited eight reasons why the procurement was inappropriate as a sole source. Also, the official stated that since the consultant is a state employee, the contract should have been handled as a personnel matter, in accordance with dual employment procedures, instead of as a procurement.

Sound business practice dictates not only the execution of a written contract, but also that final payment not be made on a contract until all services are complete to the satisfaction of the purchaser. If the geology board is not satisfied with the consultant's product, or services are not completed, the board will have paid in full for the services, with no written contract to protect itself and the state from loss.

Inappropriate Per Diem Paid

By allowing its contracted administrator and her accountant to collect per diem payments for their attendance at board meetings, the board has not complied with state regulations. They received \$1,155 in per diem from FY 87-88 through FY 89-90. Although the state Appropriations Act allows board members to collect per diem, the independent contractor and her employee are not board members, and are not entitled to such compensation.

Recommendations

The State Board of Registration for Geologists should negotiate a written contract with the examination consultant.

The State Board of Registration for Geologists should comply with the South Carolina procurement code and dual employment regulations. The board should consult with the Division of General Services about appropriate procedures to obtain needed services.

The State Board of Registration for Geologists should request reimbursement of all per diem paid without legal authority.

Sunset Issues

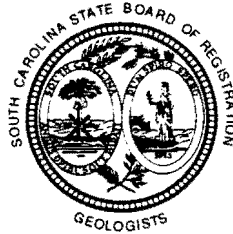
Schedule of Fees FY 90-91

	Fee
Information Packet for Application	\$10
Application for Registered Professional Geologist	\$100
Application for Geologist-in-Training	\$50
Examination	\$100
Professional Geologist Registration Renewal Fee	\$75
Geologist-in-Training Renewal Fee	\$40
Replacement Certificate	\$30
Reinstatement/Reissued Certificate	\$150
Examination Review Hearing	\$25
Seal (Required)	\$35
Roster	\$50
Temporary Permit	\$30/day, minimum of \$250

Source: State Board of Registration for Geologists.

Board Comments

South Carolina State Board of Registration for Geologists



Board Members
David G. Nichols, Chairman
James L. Carew, Ph.D., Vice Chairman
Norman K. Olson, Sec.-Treasurer
Charles R. Sherman
Carolyn F. Randolph, Ph.D.

Sam Swinehart
Executive Director

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June 17, 1991

George L. Schroeder
Director
Legislative Audit Council
400 Gervais Street
Columbia, South Carolina 29201

RE: Response to LAC's Sunset Review Report

Dear Mr. Schroeder:

Please find attached the Board's comments on the Legislative Audit Council's report.

Very truly yours,

David G. Nichols, P.G.
DAVID G. NICHOLS, P.G.
Chairman

DGN/ss

Attachments: Board Comments

COMMENTS ON THE LEGISLATIVE AUDIT COUNCIL'S
AUDIT REPORT OF
THE SOUTH CAROLINA STATE BOARD OF REGISTRATION FOR GEOLOGISTS

<u>COMMENT NUMBER</u>	<u>COMMENT LOCATION</u>			<u>COMMENTS</u>
	<u>Page</u>	<u>Para</u>	<u>Line</u>	
1	F-1	1	8	The Board disagrees with the report's conclusion regarding travel expenses. See Comment No. 13 for our detailed reponse.
2	F-1	1	12	The Board disagrees with the report's conclusion regarding higher prices to consumers. See Comment No. 4 and No. 5 for our detailed responses.
3	F-3	3	General	The Board disagrees with the report's conclusion stating that Board practices have resulted in higher costs to consumers. The report presents no evidence to support that conclusion. See Comment No. 4 and No. 5 for our detailed reponses.
4	F-3, 4	Temp. Permits		The Board recognizes that because not all states require registration of geologists, Section 40-77-370(2) of the Act places an imposition upon geologists who are not registered in their "home state" but would like to seek temporary permission to work in South Carolina. The Board intends to request the Legislature to amend the Act to provide for temporary permits for geologists who are registered in a state that has comparable registration requirements and standards to South Carolina. The audit report should reflect that the Board is implementing existing legislation. As written, the report gives the impression this is a Board decision.

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The Board is not aware of any temporary permit that it has granted that resulted in a higher cost of services to the client of a geologist. Furthermore, the Board doubts that the fee it requests would ever result in a higher cost to a geologist's client. Most work performed by out of state geologists will be on hazardous waste sites or mining sites which are high-cost projects.

Based on Board Members' personal knowledge (Mr. Nichols is a consultant and Mr. Sherman hires consultants), the Board knows that typical fees paid to a RPG, or the company employing the RPG, are usually in excess of \$25,000 (often in excess of \$100,000). It is rare for fees to be less than \$5,000 regardless of the kind of geologic study being performed. Thus, a charge of \$250 is less than 1% of the fee in most cases and only rarely will it be close to 5%.

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Reci-
procity

The Legislative Audit Report does not address all of the implications of reciprocity. The Board, to protect its registrants, must develop an agreement with any state with which it intends to grant reciprocity so that South Carolina-registered geologists will be granted the same practice privileges as the requesting state. This has not proven to be easy as the states with geological registration are in various stages of maturity. States with older registration acts do not want to recognize grandfathered registrants. This would impose an

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				unfair burden upon the South Carolina registrants who were grandfathered. The South Carolina State Board, through the Association of State Boards of Geology, is attempting to resolve this issue of how to achieve nationwide reciprocity. Only two percent of the states with geological registration now have reciprocity agreements.
6	F-5	2, 3	General	<p>The Board agrees with the recommendation that the Act be amended to permit temporary practice by geologists registered in a state with requirements comparable to South Carolina.</p> <p>The Board would like to achieve agreement with all states for mutual reciprocity and is currently working on the issue through the Association of State Boards of Geology.</p>
7	F-6	1	General	<p>The Board agrees that the use of oral examinations should be deleted from the Act, and will propose this to the Legislature.</p>
8	F-6	3	3	<p>The Board disagrees with the report's conclusion stating that Board practices have resulted in higher costs to consumers. The report presents no evidence to support that conclusion. See Comment No. 4 and No. 5 for our detailed responses.</p>
9	F-6	3	7	<p>The Board believes that ample justification exists "...to assess the impact of the registration program on public health, safety and welfare." For example, DHEC now recognizes the role of geologists and is requiring many</p>

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				reports, formerly prepared by engineers, to be prepared by registered professional geologists. This requirement affects the majority of our RPGs, as most RPGs are hydrogeologists who have their work reviewed and approved by DHEC.
10	F-8	2	2	The Board is unaware of a program at DHEC that would be equivalent to State registration. In fact, DHEC relies on the registration of professional geologists to help assure uniform, high professional standards.
11	F-8	2	6	The AIPG organization certifies, but does not register, geologists. Their requirements are not equivalent to State registration. Acceptance into AIPG is not mandatory nor does it require an examination.
12	F-10	2	5	The Board disagrees that our travel expenditures have been "excessive." See Comment No. 13 for our detailed response.
13	F-10	3, 4 5	General	<p>The Board believes that the report improperly characterizes the nature of board meetings, and that the report makes improper comparison of costs for Board meetings.</p> <p>The Board has held 48 meetings since its first meeting in September 1986. Seventy-five percent of those meetings have been in Columbia. Twelve meetings have been on weekends (beginning Friday night and going through Saturday or Sunday).</p>

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The comparison of costs (\$2,000 vs. \$250) is inaccurate. The Wilmington meeting was over a weekend -- with the Board conducting business Friday night, all day Saturday, and Sunday morning. The December 1990 meeting was a one-day meeting in Columbia.

The comparison of costs (\$2,000 vs. \$670) is also inaccurate. The costs of travel, meals and per diem would remain virtually identical regardless of location. A cost category where a significant difference could occur would be hotel costs. The Board always considered this factor and selected locations and times of year when prices for accommodations would be competitive with hotels in Columbia. The Board also believes that it is appropriate for staff from the firm providing administrative services to stay with the Board as our meetings end late and start early.

The Board believes that the LAC report gives the impression that the Board is imprudently spending registrants' money. This is a serious failure of the report and the LAC should correct its error.

Finally, the Board does not agree that holding board meetings in "resort locations" gives the wrong image. The Board has always given notice about Board meeting locations and we have never received a single complaint. Also, these locations do not limit access to the Board. The meetings comply with the public meeting practice provisions. The out-of-state meetings (North Carolina, 5 times,

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				and Georgia, one time) are in states where we have large numbers of registrants (North Carolina - 9% and Georgia - 10%).
14	F-11	1	General	The Board believes its travel expenditures have been appropriate. The LAC report is incorrect in this regard.
15	F-11	5	General	The Board agrees that it needs to enhance its contract management oversight and intends to implement acceptable business practices to accomplish this. The Board has requested its support contractor to present a business management plan that will insure that proper oversight can be accomplished.
16	F-11	6	General	The Board was always aware of the number of hours being spent and discussed the need for excess hours when special projects were required. The use of excess hours was always for extra work required by the Board in order for us to get our job completed. The Board will request the contractor to provide a compilation of both the base hours and excess hours in the future. These hourly records will become a part of the regular monthly activity report which, in turn, will continue to be recorded in the regular Board meeting minutes.
17	F-12	4, 5	General	While it is true that the Board has reimbursed the support contractor for two relocations, the circumstances under which they occurred are relevant. The first relocation was from the offices of the first support contractor who defaulted on his contract. It was

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determined by Materials Management that it was in the best interest of the Board to have the present contractor assume the support services commitment under the same terms and conditions as the existing contract until such time as a new contract could be bid and awarded. The Board agreed that the present contractor should not pay for the moving of its records and other materials because the present contractor was accepting the contract with no increase in fees and in a transition period. The relocation site was a "temporary" arrangement pending award of a new management contract. The Board was aware that a second move was imminent and accepted those conditions in advance. [Due to the defaulting contractor moving the Board's office without notifying it of his intent, the Board reserved the right to "approve" the new permanent location when/if the present contractor was awarded the contract.] During neither relocation did our present contractor request payment for movement of any of its personal or business furnishings. Only Board files/equipment were involved. The present contractor should not be penalized for actions taken by the Board in good faith.

18 F-12 6, 7 General

The board disagrees that the names of the executive director and administrative assistant on the letterhead may imply to others that the contractor is an employee or agent of the Board and therefore has the authority to enter into contracts on behalf of the Board. The purpose of the

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names is to provide a caller with a name so as to make the contact more personable. However, when the next printing of the Board's letterhead is accomplished, consideration will be given to removing both parties from the letterhead or making it clear that they are not employees of the Board. The management contract specifically states, "it is understood that [the contractor] has no authority to make any contracts in the Board's name."

19 F-13 2, 3 General
4

The Board will consult with the Division of General Services in the future for guidance in interpreting the contract or in implementing appropriate contract management controls. The Board does not intend to request reimbursement for moving expenses charged by the present contractor. The Board will give consideration to the appropriateness of including the contractor and employees on the Board's letterhead when it is next printed.

20 F-14 2, 3 General

The Board agrees that it should ensure that its contractor engages in timely deposit of receipts. The Board has requested its contractor to develop a procedure that will assure timely deposit of receipts at least once each week. The Board has requested its contractor to also develop a procedure that will ensure adequate internal accounting controls.

21 F-15 1 General

The Board has requested, and will continue to request, new appointments when members' terms expire.

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22	F-15	4	General	Our occasional out-of-state meetings are in North Carolina or Georgia. These states hold 9% and 10% of our RPGs, respectively. The out-of-state locations, or the in-state resort locations, do not hinder public participation.
23	F-16	1	General	The Board will give due consideration to lowering the cost for the roster. A review of preparation and distribution costs, as well as printing, will be conducted.
24	F-16	2, 3 4	General	<p>The Board always holds its meeting at locations readily accessible to the public. Seventy-five percent are in Columbia, during the week.</p> <p>We will make this request when the appointment expires.</p> <p>We will review a change in the cost of the roster.</p>
25	F-17	4	General	The Board agrees that written procedures are required. A draft written procedure is already in preparation.
26	F-18	1-4	General	The Board has followed the first recommendation of the LAC. A written contract has recently been drafted and will be completed and signed soon. The Chairman has assigned to one of the Board Members the responsibility for seeing that the Division of General Services is consulted in future contracts and that a Dual Employment Form is completed for the USC professor who is the testing consultant.
27	F-18	5	General	Southern Training Corporation defaulted on the initial support contract, leaving the Board without support services. Materials Management determined

Report Appendix

Letter Concerning the Program for Certification of Operators of Sources of Ionizing Radiation



Commissioner: Michael D. Jarrett

Board: John B. Pate, MD, Chairman
William E. Applegate, III, Vice Chairman
John H. Burriss, Secretary

Toney Graham, Jr., MD
Richard E. Jabbour, DDS
Henry S. Jordan, MD
Curie B. Spivey, Jr.

Promoting Health, Protecting the Environment

October 2, 1990

Dr. Marilyn Edelhoch
Legislative Audit Council
400 Gervais Street
Columbia, S. C. 29201

Dear Dr. Edelhoch:

This correspondence is in reference to the letter and questionnaire from George L. Schroder dated September 26, 1990, concerning the Program for Certification of Operators of Sources of Ionizing Radiation. Currently no such program or board is in existence.

On May 26, 1986, the Atomic Energy and Radiation Control Act, Section 13-7-40 was amended to authorize the Department of Health and Environmental Control to adopt regulations pertaining to the qualifications of operators applying ionizing radiation to humans. On February 16, 1989, the Bureau of Radiological Health presented proposed regulations for Certification of Operators of X-Ray Equipment to the Board of Health and Environmental Control. At this meeting, the Board ruled that these regulations were unnecessary and moved to determine the legislature's willingness to repeal the requirement. After determining that the Board legally must submit the regulations to the legislature, the regulations were submitted on June 1, 1989 along with a request that no action be taken until the legislature considers repealing the requirement. Since no legislative action had been taken by the 120 day automatic approval time limit and at the request of the legislature, the regulations were recalled by the Department in April 1990. This was done to give the legislature the opportunity to repeal the 1986 amendment. Therefore, no program has been initiated.

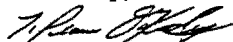
The proposed regulations would have required that the certification program be administered by the Department. No specific certification board would have been established. Since no independent board would be utilized, I am not sure whether the Sunset Act applies. I do know that the questionnaire cannot be completed since the program does not currently exist.



Dr. Marilyn Edelhoch
October 2, 1990
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I hope this provides the necessary information for your audit requirements. If additional information or a copy of the proposed regulations are needed, please contact me at 734-4700.

Sincerely,



T. Pearce O'Kelley, MPH Director
Division of Electronic Products
Bureau of Radiological Health

TPO/as

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